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SENATE BILL 248

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Gerald P. Ortiz y Pino

AN ACT

RELATING TO CHILDREN; AMENDING SECTIONS OF THE CHILDREN'S CODE AND OTHER LAWS; REPLACING THE JUVENILE PAROLE BOARD WITH A JUVENILE PUBLIC SAFETY ADVISORY BOARD; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 9-2A-16 NMSA 1978 (being Laws 1992, Chapter 57, Section 16) is amended to read:

"9-2A-16. FUNCTIONS OF JUVENILE JUSTICE ADVISORY COMMITTEE AND DEPARTMENT.--

A. The juvenile justice advisory committee shall have policymaking, planning and review powers over only the following functions pursuant to the federal Juvenile Justice and Delinquency Prevention Act of 1974:

(1) in conjunction with the department,

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1 approval of a comprehensive state plan and modifications
2 reflecting statewide goals, objectives and priorities for the
3 expenditure of federal funds received under that act;

4 (2) approval or disapproval of applications or
5 amendments submitted by eligible entities pursuant to that act;

6 (3) in conjunction with the department,
7 assurance that fund accounting, auditing and evaluation of
8 programs and projects funded pursuant to that act comply with
9 federal requirements and state law;

10 (4) in conjunction with the department,
11 receive and review annual reports from adult jails and lockups
12 regarding compliance with federal requirements that apply when
13 a juvenile is temporarily held in an adult jail or lockup. The
14 juvenile justice advisory committee and the department shall
15 determine the format of the annual reports;

16 [~~(4)~~] (5) assistance to the governor, the
17 legislature and entities created or funded pursuant to that act
18 in developing new or improved approaches, policies or
19 legislation designed to improve juvenile justice in New Mexico;
20 and

21 [~~(5)~~] (6) provision of technical assistance by
22 the department to eligible entities pursuant to that act.

23 B. All budgetary, evaluation, monitoring and grants
24 administration functions required pursuant to the federal
25 Juvenile Justice and Delinquency Prevention Act of 1974 shall

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1 be carried out by the department."

2 Section 2. Section 30-22-11.1 NMSA 1978 (being Laws 1993,
3 Chapter 121, Section 1) is amended to read:

4 "30-22-11.1. ESCAPE FROM THE CUSTODY OF THE CHILDREN,
5 YOUTH AND FAMILIES DEPARTMENT--ESCAPE FROM JUVENILE
6 DETENTION.--Escape from the custody of the children, youth and
7 families department consists of any person who has been
8 adjudicated as a delinquent child and has been committed
9 lawfully to the custody of a department juvenile justice
10 facility or who is alleged to be a delinquent child and has
11 been lawfully detained in a juvenile detention facility:

12 A. escaping or attempting to escape from custody
13 within the confines of a children, youth and families
14 department juvenile justice facility; or

15 B. escaping or attempting to escape from another
16 lawful place of custody or confinement that is not within the
17 confines of a children, youth and families department juvenile
18 justice facility.

19 Any person who commits escape from the custody of a
20 children, youth and families department juvenile justice
21 facility is guilty of a misdemeanor."

22 Section 3. Section 30-22-11.2 NMSA 1978 (being Laws 1994,
23 Chapter 18, Section 1) is amended to read:

24 "30-22-11.2. AGGRAVATED ESCAPE FROM THE CUSTODY OF THE
25 CHILDREN, YOUTH AND FAMILIES DEPARTMENT.--Aggravated escape

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1 from the custody of the children, youth and families department
2 consists of any person who has been adjudicated as a delinquent
3 child and has been committed lawfully to the custody of a
4 department juvenile justice facility or who is alleged to be a
5 delinquent child and has been lawfully detained in a juvenile
6 detention facility:

7 A. escaping or attempting to escape from custody
8 within the confines of a children, youth and families
9 department juvenile justice facility and committing assault or
10 battery on another person in the course of escaping or
11 attempting to escape; or

12 B. escaping or attempting to escape from a lawful
13 place of custody or confinement that is not within the confines
14 of a children, youth and families department juvenile justice
15 facility and committing assault or battery on another person in
16 the course of escaping or attempting to escape.

17 Any person who commits aggravated escape from the custody
18 of the children, youth and families department is guilty of a
19 fourth degree felony."

20 Section 4. Section 31-26-12 NMSA 1978 (being Laws 1994,
21 Chapter 144, Section 12, as amended) is amended to read:

22 "31-26-12. PROCEDURES WHEN AN INMATE IS RELEASED FROM
23 INCARCERATION--ADULT PAROLE BOARD--CORRECTIONS DEPARTMENT--
24 PROCEDURES WHEN A DELINQUENT CHILD IS RELEASED FROM CUSTODY--
25 JUVENILE PAROLE BOARD--CHILDREN, YOUTH AND FAMILIES

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1 DEPARTMENT--DISTRICT ATTORNEYS.--

2 A. The adult parole board and the [~~juvenile parole~~
3 ~~board~~] children, youth and families department shall provide a
4 copy of their respective regular release dockets to each
5 district attorney in the state at least ten working days before
6 the docket is considered [~~by the board~~]. The district attorney
7 shall notify any person known to reside in [~~his~~] the district
8 who was a victim of the criminal offense for which the inmate
9 was incarcerated or the delinquent child was committed.

10 B. The adult parole board [~~and~~] or the [~~juvenile~~
11 ~~parole board~~] children, youth and families department shall
12 provide a copy of a supplemental, addendum or special docket to
13 each district attorney at least five working days before the
14 release docket is considered [~~by the board~~].

15 C. Following consideration of a release docket by
16 the adult parole board or the [~~juvenile parole board, each~~
17 ~~board~~] children, youth and families department, the board and
18 department shall promptly notify each district attorney of
19 [~~any~~] recommendations [~~adopted by the board~~] for release of an
20 inmate from incarceration or a delinquent child from custody.
21 The district attorney shall notify any person known to reside
22 in [~~his~~] the district attorney's district who was a victim of
23 the criminal offense for which the inmate was incarcerated or
24 the delinquent child was committed.

25 D. In the case of an inmate scheduled to be

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1 released from incarceration without parole or prior to parole
2 for any reason, or a delinquent child scheduled to be released
3 from custody, the corrections department or the children, youth
4 and families department shall notify each district attorney at
5 least fifteen working days before the inmate's or delinquent
6 child's release. The district attorney shall notify any person
7 known to reside in [~~his~~] the district who was a victim of the
8 criminal offense for which the inmate was incarcerated or the
9 delinquent child was committed."

10 Section 5. Section 32A-1-3 NMSA 1978 (being Laws 1993,
11 Chapter 77, Section 12, as amended) is amended to read:

12 "32A-1-3. PURPOSE OF ACT.--The Children's Code shall be
13 interpreted and construed to effectuate the following
14 legislative purposes:

15 A. first to provide for the care, protection and
16 wholesome mental and physical development of children coming
17 within the provisions of the Children's Code and then to
18 preserve the unity of the family whenever possible. [~~The~~] A
19 child's health and safety shall be the paramount concern.
20 Permanent separation of [~~the~~] a child from the child's family,
21 however, would especially be considered when the child or
22 another child of the parent has suffered permanent or severe
23 injury or repeated abuse. It is the intent of the legislature
24 that, to the maximum extent possible, children in New Mexico
25 shall be reared as members of a family unit;

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1 B. to provide judicial and other procedures through
2 which the provisions of the Children's Code are executed and
3 enforced and in which the parties are assured a fair hearing
4 and their constitutional and other legal rights are recognized
5 and enforced;

6 C. to provide a continuum of services for children
7 and their families, from prevention to treatment, considering
8 whenever possible prevention, diversion and early intervention,
9 particularly in the schools;

10 D. to provide children with services that are
11 sensitive to their cultural needs;

12 E. to reduce overrepresentation of minority
13 children and families in the juvenile justice, family services
14 and abuse and neglect systems through early intervention,
15 linkages to community support services and the elimination of
16 discrimination;

17 ~~[E.]~~ F. to provide for the cooperation and
18 coordination of the civil and criminal systems for
19 investigation, intervention and disposition of cases, to
20 minimize interagency conflicts and to enhance the coordinated
21 response of all agencies to achieve the best interests of ~~[the]~~
22 a child victim; and

23 ~~[F.]~~ G. to provide continuity for children and
24 families appearing before the children's court by assuring
25 that, whenever possible, a single judge hears all successive

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1 cases or proceedings involving a child or family."

2 Section 6. Section 32A-1-4 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 13, as amended) is amended to read:

4 "32A-1-4. DEFINITIONS.--As used in the Children's Code:

5 A. "adult" means a person who is eighteen years of
6 age or older;

7 B. "child" means a person who is less than eighteen
8 years old;

9 C. "court", when used without further
10 qualification, means the children's court division of the
11 district court and includes the judge, special master or
12 commissioner appointed pursuant to the provisions of the
13 Children's Code or supreme court rule;

14 D. "court-appointed special advocate" or "CASA"
15 means a person appointed as a CASA, pursuant to the provisions
16 of the Children's Court Rules, who assists the court in
17 determining the best interests of the child by investigating
18 the case and submitting a report to the court;

19 E. "custodian" means an adult with whom the child
20 lives who is not a parent or guardian of the child;

21 F. "department" means the children, youth and
22 families department, unless otherwise specified;

23 G. "disproportionate minority contact" means the
24 involvement of a racial or ethnic group with the criminal or
25 juvenile justice system at a proportion either higher or lower

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1 than that group's proportion in the general population;

2 [G-] H. "foster parent" means a person, including a
3 relative of the child, licensed or certified by the department
4 or a child placement agency to provide care for children in the
5 custody of the department or agency;

6 [H-] I. "guardian" means a person appointed as a
7 guardian by a court or Indian tribal authority or a person
8 authorized to care for the child by a parental power of
9 attorney as permitted by law;

10 [I-] J. "guardian ad litem" means an attorney
11 appointed by the children's court to represent and protect the
12 best interests of the child in a court proceeding; provided
13 that no party or employee or representative of a party to the
14 proceeding shall be appointed to serve as a guardian ad litem;

15 [J-] K. "Indian child" means an unmarried person
16 who is:

- 17 (1) less than eighteen years old;
18 (2) a member of an Indian tribe or is eligible
19 for membership in an Indian tribe; and
20 (3) the biological child of a member of an
21 Indian tribe;

22 [K-] L. "Indian child's tribe" means:

- 23 (1) the Indian tribe in which an Indian child
24 is a member or eligible for membership; or
25 (2) in the case of an Indian child who is a

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1 member or eligible for membership in more than one tribe, the
2 Indian tribe with which the Indian child has more significant
3 contacts;

4 ~~[L.]~~ M. "Indian tribe" means a federally recognized
5 Indian tribe, community or group pursuant to 25 U.S.C. Section
6 1903(1);

7 ~~[M.]~~ N. "judge", when used without further
8 qualification, means the judge of the court;

9 ~~[N.]~~ O. "legal custody" means a legal status
10 created by order of the court or other court of competent
11 jurisdiction or by operation of statute that vests in a person,
12 department or agency the right to determine where and with whom
13 a child shall live; the right and duty to protect, train and
14 discipline the child and to provide the child with food,
15 shelter, personal care, education and ordinary and emergency
16 medical care; the right to consent to major medical,
17 psychiatric, psychological and surgical treatment and to the
18 administration of legally prescribed psychotropic medications
19 pursuant to the Children's Mental Health and Developmental
20 Disabilities Act; and the right to consent to the child's
21 enlistment in the armed forces of the United States;

22 ~~[O.]~~ P. "parent" or "parents" includes a biological
23 or adoptive parent if the biological or adoptive parent has a
24 constitutionally protected liberty interest in the care and
25 custody of the child;

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1 [P-] Q. "permanency plan" means a determination by
2 the court that the child's interest will be served best by:

3 (1) reunification;

4 (2) placement for adoption after the parents'
5 rights have been relinquished or terminated or after a motion
6 has been filed to terminate parental rights;

7 (3) placement with a person who will be the
8 child's permanent guardian;

9 (4) placement in the legal custody of the
10 department with the child placed in the home of a fit and
11 willing relative; or

12 (5) placement in the legal custody of the
13 department under a planned permanent living arrangement;

14 [Q-] R. "person" means an individual or any other
15 form of entity recognized by law;

16 [R-] S. "preadoptive parent" means a person with
17 whom a child has been placed for adoption;

18 [S-] T. "protective supervision" means the right to
19 visit the child in the home where the child is residing,
20 inspect the home, transport the child to court-ordered
21 diagnostic examinations and evaluations and obtain information
22 and records concerning the child;

23 [F-] U. "reunification" means either a return of
24 the child to the parent or to the home from which the child was
25 removed or a return to the noncustodial parent;

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1 [~~U-~~] V. "tribal court" means:

2 (1) a court established and operated pursuant
3 to a code or custom of an Indian tribe; or

4 (2) any administrative body of an Indian tribe
5 that is vested with judicial authority;

6 [~~V-~~] W. "tribal court order" means a document
7 issued by a tribal court that is signed by an appropriate
8 authority, including a judge, governor or tribal council
9 member, and that orders an action that is within the tribal
10 court's jurisdiction; and

11 [~~W-~~] X. "tribunal" means any judicial forum other
12 than the court."

13 Section 7. Section 32A-1-8 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 17, as amended) is amended to read:

15 "32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT
16 JURISDICTION.--

17 A. The court has exclusive original jurisdiction of
18 all proceedings under the Children's Code in which a person is
19 eighteen years of age or older and was a child at the time the
20 alleged act in question was committed or is a child alleged to
21 be:

22 (1) a delinquent child;

23 (2) a child of a family in need of
24 court-ordered services or a child in need of services pursuant
25 to the Family in Need of Court-Ordered Services Act;

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- 1 (3) a neglected child;
- 2 (4) an abused child;
- 3 (5) a child subject to adoption; or
- 4 (6) a child subject to placement for a
- 5 developmental disability or a mental disorder.

6 B. The court has exclusive original jurisdiction to
7 emancipate a minor.

8 C. During abuse or neglect proceedings in which New
9 Mexico is the home state, pursuant to the provisions of the
10 Uniform Child-Custody Jurisdiction and Enforcement Act, the
11 court shall have jurisdiction over both parents to determine
12 the best interest of the child and to decide all matters
13 incident to the court proceedings.

14 D. Nothing in this section shall be construed to in
15 any way abridge the rights of any Indian tribe to exercise
16 jurisdiction over child custody matters as defined by and in
17 accordance with the federal Indian Child Welfare Act of 1978.

18 E. A tribal court order pertaining to an Indian
19 child in an action under the Children's Code shall be
20 recognized and enforced by the district court for the judicial
21 district in which the tribal court is located. A tribal court
22 order pertaining to an Indian child that accesses state
23 resources shall be recognized and enforced pursuant to the
24 provisions of intergovernmental agreements entered into by the
25 Indian child's tribe and the department or another state

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1 agency. An Indian child residing on or off a reservation, as a
2 citizen of this state, shall have the same right to services
3 that are available to other children of the state, pursuant to
4 intergovernmental agreements. The cost of the services
5 provided to an Indian child shall be determined and provided
6 for in the same manner as services are made available to other
7 children of the state, utilizing tribal, state and federal
8 funds and pursuant to intergovernmental agreements. The tribal
9 court, as the court of original jurisdiction, shall retain
10 jurisdiction and authority over the Indian child.

11 F. The court may acquire jurisdiction over a Motor
12 Vehicle Code or municipal traffic code violation as set forth
13 in Section 32A-2-29 NMSA 1978."

14 Section 8. Section 32A-1-21 NMSA 1978 (being Laws 2007,
15 Chapter 185, Section 2) is amended to read:

16 "32A-1-21. RUNAWAY CHILD--LAW ENFORCEMENT--PERMITTED
17 ACTS.--Whenever a law enforcement agency receives a report from
18 a parent, guardian or custodian that a child over whom the
19 parent, guardian or custodian has custody has, without
20 permission, left the home or residence lawfully prescribed for
21 the child and the parent, guardian or custodian believes the
22 child has run away, a law enforcement agent may help the
23 parent, guardian or custodian locate the child and:

24 A. return the child to the parent, guardian or
25 custodian unless safety concerns are present;

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1 B. hold the child for up to six hours if the
2 parent, guardian or custodian cannot be located; provided,
3 however, that no child shall be placed in a secured setting
4 pursuant to this section; or

5 C. after the six hours has expired, follow the
6 procedures outlined in Section 32A-3B-3 NMSA 1978."

7 Section 9. Section 32A-2-3 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 32, as amended) is amended to read:

9 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

10 A. "delinquent act" means an act committed by a
11 child that would be designated as a crime under the law if
12 committed by an adult, including the following offenses:

13 (1) ~~[an offense]~~ any of the following offenses
14 pursuant to municipal traffic codes or the Motor Vehicle Code:

15 (a) driving while under the influence of
16 intoxicating liquor or drugs;

17 (b) failure to stop in the event of an
18 accident causing death, personal injury or damage to property;

19 (c) unlawful taking of a vehicle or
20 motor vehicle;

21 (d) receiving or transferring of a
22 stolen vehicle or motor vehicle;

23 (e) homicide by vehicle;

24 (f) injuring or tampering with a
25 vehicle;

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1 (g) altering or changing of an engine
2 number or other vehicle identification numbers;

3 (h) altering or forging of a driver's
4 license or permit or any making of a fictitious license or
5 permit;

6 (i) reckless driving;

7 (j) driving with a suspended or revoked
8 license; or

9 (k) an offense punishable as a felony;

10 (2) buying, attempting to buy, receiving,
11 possessing or being served any alcoholic liquor or being
12 present in a licensed liquor establishment, other than a
13 restaurant or a licensed retail liquor establishment, except in
14 the presence of the child's parent, guardian, custodian or
15 adult spouse. As used in this paragraph, "restaurant" means an
16 establishment where meals are prepared and served primarily for
17 on-premises consumption and that has a dining room, a kitchen
18 and the employees necessary for preparing, cooking and serving
19 meals. "Restaurant" does not include an establishment, as
20 defined in regulations promulgated by the director of the
21 special investigations division of the department of public
22 safety, that serves only hamburgers, sandwiches, salads and
23 other fast foods;

24 (3) a violation of Section 30-29-2 NMSA 1978,
25 regarding the illegal use of a glue, aerosol spray product or
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1 other chemical substance;

2 (4) a violation of the Controlled Substances
3 Act;

4 (5) escape from the custody of a law
5 enforcement officer or a juvenile probation or parole officer
6 or from any placement made by the department by a child who has
7 been adjudicated a delinquent child;

8 (6) a violation of Section 30-15-1.1 NMSA 1978
9 regarding unauthorized graffiti on personal or real property;
10 or

11 (7) a violation of an order of protection
12 issued pursuant to the provisions of the Family Violence
13 Protection Act;

14 B. "delinquent child" means a child who has
15 committed a delinquent act;

16 C. "delinquent offender" means a delinquent child
17 who is subject to juvenile sanctions only and who is not a
18 youthful offender or a serious youthful offender;

19 D. "detention facility" means a place where a child
20 may be detained under the Children's Code pending court hearing
21 and does not include a facility for the care and rehabilitation
22 of an adjudicated delinquent child;

23 E. "felony" means an act that would be a felony if
24 committed by an adult;

25 F. "misdemeanor" means an act that would be a

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1 misdemeanor or petty misdemeanor if committed by an adult;

2 G. "restitution" means financial reimbursement by
3 the child to the victim or community service imposed by the
4 court and is limited to easily ascertainable damages for injury
5 to or loss of property, actual expenses incurred for medical,
6 psychiatric and psychological treatment for injury to a person
7 and lost wages resulting from physical injury, which are a
8 direct and proximate result of a delinquent act. "Restitution"
9 does not include reimbursement for damages for mental anguish,
10 pain and suffering or other intangible losses. As used in this
11 subsection, "victim" means a person who is injured or suffers
12 damage of any kind by an act that is the subject of a complaint
13 or referral to law enforcement officers or juvenile probation
14 authorities. Nothing contained in this definition limits or
15 replaces the provisions of Subsections A and B of Section
16 32A-2-27 NMSA 1978;

17 H. "serious youthful offender" means an individual
18 fifteen to eighteen years of age who is charged with and
19 indicted or bound over for trial for first degree murder. A
20 "serious youthful offender" is not a delinquent child as
21 defined pursuant to the provisions of this section; ~~[and]~~

22 I. "supervised release" means the release of a
23 juvenile, whose term of commitment has not expired, from a
24 facility for the care and rehabilitation of adjudicated
25 delinquent children, with specified conditions to protect

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1 public safety and promote successful transition and
2 reintegration into the community. A juvenile on supervised
3 release is subject to monitoring by the department until the
4 term of commitment has expired, and may be returned to custody
5 for violating conditions of release; and

6 [~~F.~~] J. "youthful offender" means a delinquent
7 child subject to adult or juvenile sanctions who is:

8 (1) fourteen to eighteen years of age at the
9 time of the offense and who is adjudicated for at least one of
10 the following offenses:

11 (a) second degree murder, as provided in
12 Section 30-2-1 NMSA 1978;

13 (b) assault with intent to commit a
14 violent felony, as provided in Section 30-3-3 NMSA 1978;

15 (c) kidnapping, as provided in
16 Section 30-4-1 NMSA 1978;

17 (d) aggravated battery, as provided in
18 Subsection C of Section 30-3-5 NMSA 1978;

19 (e) aggravated battery against a
20 household member, as provided in Subsection C of Section
21 30-3-16 NMSA 1978;

22 (f) aggravated battery upon a peace
23 officer, as provided in Subsection C of Section 30-22-25 NMSA
24 1978;

25 (g) shooting at a dwelling or occupied

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1 building or shooting at or from a motor vehicle, as provided in
2 Section 30-3-8 NMSA 1978;

3 (h) dangerous use of explosives, as
4 provided in Section 30-7-5 NMSA 1978;

5 (i) criminal sexual penetration, as
6 provided in Section 30-9-11 NMSA 1978;

7 (j) robbery, as provided in Section
8 30-16-2 NMSA 1978;

9 (k) aggravated burglary, as provided in
10 Section 30-16-4 NMSA 1978;

11 (l) aggravated arson, as provided in
12 Section 30-17-6 NMSA 1978; or

13 (m) abuse of a child that results in
14 great bodily harm or death to the child, as provided in Section
15 30-6-1 NMSA 1978;

16 (2) fourteen to eighteen years of age at the
17 time of the offense, ~~[and]~~ who is adjudicated for any felony
18 offense and who has had three prior, separate felony
19 adjudications within a three-year time period immediately
20 preceding the instant offense. The felony adjudications relied
21 upon as prior adjudications shall not have arisen out of the
22 same transaction or occurrence or series of events related in
23 time and location. Successful completion of consent decrees
24 are not considered a prior adjudication for the purposes of
25 this paragraph; or

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1 (3) fourteen years of age and who is
2 adjudicated for first degree murder, as provided in Section
3 30-2-1 NMSA 1978."

4 Section 10. Section 32A-2-4 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 33, as amended) is amended to read:

6 "32A-2-4. DETENTION FACILITIES--STANDARDS--REPORTS--
7 APPEALS.--

8 A. The department shall promulgate updated
9 standards for all detention facilities, including standards for
10 site, design, construction, equipment, care, program, personnel
11 and clinical services. The department shall certify as
12 approved all detention facilities in the state meeting the
13 standards promulgated. The department may establish by rule
14 appropriate procedures for provisional certification and the
15 waiving of any of its standards for facilities in existence at
16 the time of the adoption of the standards, except that it shall
17 not allow waiver of any standard pertaining to adequate health
18 and safety protection of the residents and staff of the
19 facility. No child shall be detained in a detention facility
20 unless it is certified as approved by the department, except as
21 otherwise provided in Chapter 32A, Article 2 NMSA 1978.

22 B. The department shall inspect all detention
23 facilities in the state at least once each twelve months and
24 shall require those reports it deems necessary from detention
25 facilities in a form and containing the information determined

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1 by the department. If as the result of an inspection a
2 certified detention facility is determined as failing to meet
3 the required standards, its certification is subject to
4 revocation or refusal for renewal by the department.

5 C. The department shall promulgate rules
6 establishing procedures that provide for prior notice and
7 public hearings on detention facilities' standards adoption and
8 changes. The department shall also promulgate rules
9 establishing procedures for facility certification, renewal of
10 certification, refusal to renew certification and revocation of
11 certification. The procedures adopted on these matters shall
12 provide for adequate prior notice of intended action by the
13 department, opportunity for the aggrieved person to have an
14 administrative hearing and written notification of the
15 administrative decision. Rules promulgated under this
16 subsection shall not be effective unless filed in accordance
17 with the State Rules Act.

18 D. Any person aggrieved by an administrative
19 decision of the department rendered under the provisions of
20 this section may petition for the review of the administrative
21 decision by appealing to the district court pursuant to the
22 provisions of Section 39-3-1.1 NMSA 1978.

23 E. After January 1, 1994, no state or county
24 detention facility shall hold juveniles sentenced by a federal
25 court, unless the facility meets state standards promulgated by

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1 the department.

2 F. A juvenile detention facility certified by the
3 department shall comply with the daily reporting requirement
4 for children in detention, including reports on the length of
5 stay for each child. This information shall be reported as
6 required by the department."

7 Section 11. A new Section 32A-2-4.1 NMSA 1978 is enacted
8 to read:

9 "32A-2-4.1. [NEW MATERIAL] ADULT JAILS AND LOCKUPS USED
10 AS TEMPORARY HOLDING FACILITIES--REPORTS.--

11 A. A child arrested and detained for an alleged
12 delinquent act may be temporarily held in an adult jail or
13 lockup for no longer than six hours. A child who is detained
14 in an adult jail or lockup shall be placed in a setting that is
15 physically segregated by sight and sound from adult offenders.
16 After six hours, the child may be placed or detained pursuant
17 to the provisions of Section 32A-2-12 NMSA 1978.

18 B. An adult jail or lockup used as a temporary
19 holding facility for alleged delinquent offenders shall file an
20 annual report regarding its compliance with federal
21 requirements. The juvenile justice advisory committee and the
22 department shall determine the format of the annual reports."

23 Section 12. Section 32A-2-10 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 39, as amended) is amended to read:

25 "32A-2-10. RELEASE OR DELIVERY FROM CUSTODY.--

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1 A. A person taking a child into custody shall, with
2 all reasonable speed:

3 (1) release the child to the child's parent,
4 guardian or custodian or an adult authorized by the child's
5 parent, guardian or custodian and issue verbal counsel or
6 warning as may be appropriate;

7 (2) release the child to the child's parent,
8 guardian or custodian or an adult authorized to sign on behalf
9 of the child's parent, guardian or custodian upon [~~their~~]
10 written promise to bring the child before the court when
11 requested by the court. If the parent, guardian or custodian
12 or an adult authorized to sign on behalf of the child's parent,
13 guardian or custodian fails, when requested, to bring the child
14 before the court as promised, the court may order the child
15 taken into custody and brought before the court;

16 (3) deliver the child to a place of detention
17 as provided in Section 32A-2-12 NMSA 1978;

18 (4) deliver the child to a medical facility,
19 if available, if the child is believed to be suffering from a
20 serious illness that requires prompt treatment or prompt
21 diagnosis; [~~or~~]

22 (5) deliver the child to an evaluation
23 facility, if available, if the person taking the child into
24 custody has reasonable grounds to believe the child presents a
25 likelihood of serious harm to [~~himself~~] the child's self or

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1 others or is suffering from some other serious mental condition
2 or illness that requires prompt treatment or prompt diagnosis;
3 or

4 (6) deliver the child to a center or
5 organization that the court or the department recognizes as an
6 alternative to secure detention.

7 B. When an alleged delinquent child is delivered to
8 a place of detention or a center or organization recognized as
9 an alternative to secure detention as provided in Section
10 32A-2-12 NMSA 1978, only a department employee or a trained
11 county detention professional designated by the department may
12 place the child in detention or with a center or organization
13 recognized as an alternative to secure detention in accordance
14 with the criteria for detention set forth in Section 32A-2-11
15 NMSA 1978. If the criteria for detention of an alleged
16 delinquent child are not met, the child shall be released from
17 custody.

18 C. A child under the age of eleven shall not be
19 held in detention. If a child under the age of eleven poses a
20 substantial risk of harm to ~~[himself]~~ the child's self or
21 others, a peace officer may detain and transport that child for
22 emergency mental health evaluation and care in accordance with
23 Section ~~[32A-6-11]~~ 32A-6A-19 NMSA 1978.

24 D. If a child is taken into custody and is not
25 released to the child's parent, guardian or custodian or an

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1 adult authorized by the child's parent, guardian or custodian,
2 the person taking the child into custody shall give written
3 notice thereof as soon as possible, and in no case later than
4 twenty-four hours, to the child's parent, guardian or custodian
5 or an adult authorized by the child's parent, guardian or
6 custodian and to the court, together with a statement of the
7 reason for taking the child into custody.

8 E. In all cases when a child is taken into custody,
9 the child shall be released to the child's parent, guardian or
10 custodian or an adult authorized by the child's parent,
11 guardian or custodian in accordance with the conditions and
12 time limits set forth in the Children's Court Rules."

13 Section 13. Section 32A-2-12 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 41, as amended) is amended to read:

15 "32A-2-12. PLACEMENT OR DETENTION.--

16 A. A child alleged to be a delinquent child may be
17 placed or detained, pending a court hearing, in any of the
18 following places:

19 (1) a licensed foster home or a home otherwise
20 authorized under the law to provide foster or group care;

21 (2) a facility operated by a licensed child
22 welfare services agency;

23 (3) a shelter-care facility provided for in
24 the Children's Shelter Care Act [~~or a detention facility~~
25 ~~certified by the department for children alleged to be~~

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1 ~~delinquent children~~ that is in compliance with all standards,
2 conditions and regulatory requirements and that shall be
3 considered a temporary placement subject to judicial review
4 within thirty days of placement;

5 (4) a detention facility certified by the
6 department for children alleged to be delinquent children;

7 [~~4~~] (5) any other suitable place, other than
8 a facility for the long-term care and rehabilitation of
9 delinquent children to which children adjudicated as delinquent
10 may be confined pursuant to Section 32A-2-19 NMSA 1978,
11 designated by the court and [~~which~~] that meets the standards
12 for detention facilities pursuant to the Children's Code and
13 federal law; or

14 [~~5~~] (6) the child's home or place of
15 residence, under conditions and restrictions approved by the
16 court.

17 B. A child alleged to be a youthful offender may be
18 detained, pending a court hearing, in any of the following
19 places:

20 (1) a detention facility, licensed by the
21 department, for children alleged to be delinquent children; or

22 (2) any other suitable place, other than a
23 facility for the long-term care and rehabilitation of
24 delinquent children to which children adjudicated as delinquent
25 children may be confined pursuant to Section 32A-2-19 NMSA

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1 1978, designated by the court and that meets the standards for
2 detention facilities pursuant to the Children's Code and
3 federal law.

4 C. A child adjudicated as a youthful offender who
5 is violent toward staff or other residents in a detention
6 facility may be transferred and detained, pending a court
7 hearing, in a county jail. In the event that a child is
8 detained in a jail, the director of the jail shall presume that
9 the child is vulnerable to victimization by inmates within the
10 adult population because of [~~his~~] the child's age, and shall
11 take measures to provide protection to the child. However,
12 provision of protective measures shall not result in
13 diminishing a child's civil rights to less than those existing
14 for an incarcerated adult.

15 D. A child who has previously been incarcerated as
16 an adult or a person eighteen years of age or older who is
17 under the jurisdiction of the children's court and subsequently
18 commits an adult crime shall not be detained in a juvenile
19 detention facility or a facility for the long-term care and
20 rehabilitation of delinquent children, but may be detained in a
21 county jail. In the event that a child is detained in a jail,
22 the director of the jail shall presume that the child is
23 vulnerable to victimization by inmates within the adult
24 population because of [~~his~~] the child's age, and shall take
25 measures to provide protection to the child. However,

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1 provision of protective measures shall not result in
2 diminishing a child's civil rights to less than those existing
3 for an incarcerated adult.

4 E. A child alleged to be a serious youthful
5 offender may be detained pending a court hearing in any of the
6 following places, prior to arraignment in metropolitan,
7 magistrate or district court:

8 (1) a detention facility, licensed by the
9 department, for children alleged to be delinquent children;

10 (2) any other suitable place, other than a
11 facility for the long-term care and rehabilitation of
12 delinquent children to which children adjudicated as delinquent
13 children may be confined pursuant to Section 32A-2-19 NMSA
14 1978, designated by the court [~~which~~] that meets the standards
15 for detention facilities pursuant to the Children's Code and
16 federal law; or

17 (3) a county jail, if a facility in Paragraph
18 (1) or (2) of this subsection is not appropriate. In the event
19 that a child is detained in a jail, the director of the jail
20 shall presume that the child is vulnerable to victimization by
21 inmates within the adult population because of [~~his~~] the
22 child's age and shall take measures to provide protection to
23 the child. However, provision of protective measures shall not
24 result in diminishing a child's civil rights to less than those
25 existing for an incarcerated adult.

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1 F. A child who has previously been incarcerated as
2 an adult or a person eighteen to twenty-one years of age who is
3 subject solely to the jurisdiction of the children's court may
4 be detained in any of the following places prior to the
5 individual's initial appearance before the court or preliminary
6 parole revocation hearing:

7 (1) a detention facility licensed by the
8 department for children alleged to be delinquent children;

9 (2) another suitable place designated by the
10 court to which children adjudicated as delinquent children may
11 be confined pursuant to Section 32A-2-19 NMSA 1978 and that
12 meets the standards for detention facilities pursuant to the
13 Children's Code and federal law, except that such children
14 shall not be confined to a facility for the long-term care and
15 rehabilitation of delinquent children;

16 (3) a county jail, if a facility listed in
17 Paragraph (1) or (2) of this subsection is not appropriate. In
18 the event that a child is detained in a jail, the director of
19 the jail shall presume that the child is vulnerable to
20 victimization by inmates within the adult population because of
21 the child's age and shall take measures to provide protection
22 to the child. However, provision of protective measures shall
23 not result in diminishing a child's civil rights to less than
24 those existing for an incarcerated adult; or

25 (4) at the initial appearance before the court

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1 or preliminary parole or supervised release revocation hearing,
2 if the court or hearing officer orders the individual to remain
3 in detention, the court or hearing officer shall make a
4 determination of whether it is appropriate to detain the
5 individual in a county jail, after due consideration of any
6 relevant and material evidence, including any report provided
7 by the juvenile detention facility that has detained or may be
8 ordered to detain the child. In the event that a child is
9 detained in a jail, the protections of the child shall be as
10 set forth in Paragraph (3) of this subsection. If detention in
11 a county jail is not deemed to be appropriate by the court, the
12 individual may be detained in a facility listed in Paragraph
13 (1) or (2) of this subsection.

14 [F-] G. When a person who is eighteen years of age
15 or older is taken into custody and transported to an adult
16 facility on a juvenile warrant or an adult warrant or other
17 adult charges and an outstanding juvenile warrant exists,
18 notice shall be given to the children's court attorney and the
19 juvenile probation and parole office in the jurisdiction where
20 the juvenile warrant was issued within one day of the person
21 being taken into custody. The juvenile probation and parole
22 office shall give notice that the person has been taken into
23 custody to the children's court judge and the attorney who
24 represented the person in the juvenile proceeding.

25 H. In addition to the judicial review required by

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1 Paragraph (3) of Subsection A of this section, a child detained
2 in an out-of-home placement pursuant to this section may
3 request judicial review of the appropriateness of the
4 placement."

5 Section 14. Section 32A-2-13 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 42, as amended) is amended to read:

7 "32A-2-13. DETENTION HEARING REQUIRED ON DETAINED
8 CHILDREN--PROBABLE CAUSE DETERMINATION--COURT DETERMINATION--
9 DISPOSITION.--

10 A. When a child who has been taken into custody is
11 not released but is detained:

12 (1) a judicial determination of probable cause
13 shall be made by a judge or special master or magistrate within
14 forty-eight hours, including Saturdays, Sundays and legal
15 holidays, except for children taken into custody under an
16 arrest warrant pursuant to the Children's Court Rules. A
17 statement by a law enforcement officer, which shall include the
18 charges, may be the basis of a probable cause determination.
19 The probable cause determination shall be nonadversarial, may
20 be held in the absence of the child and counsel and may be
21 conducted by telephone. If the court finds no probable cause
22 to believe the child committed an offense, the child shall be
23 released;

24 (2) a petition shall be filed within twenty-
25 four hours from the time the child is taken into custody,

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1 excluding Saturdays, Sundays and legal holidays, and if not
2 filed within the stated time, the child shall be released; and

3 (3) a detention hearing shall be held within
4 twenty-four hours, excluding Saturdays, Sundays and legal
5 holidays, from the time of filing the petition to determine
6 whether continued detention is required pursuant to the
7 criteria established by the Children's Code. At the request of
8 any party, the court may permit a detention hearing to be
9 conducted by appropriate means of electronic communication;
10 provided that all hearings conducted by electronic means shall
11 be recorded and preserved as part of the record and the court
12 finds:

13 (a) that undue hardship will result from
14 conducting the hearing with all parties, including the child,
15 present in the courtroom; and

16 (b) that the hardship substantially
17 outweighs any prejudice or harm to the child that is likely to
18 result from the hearing being conducted by electronic means.

19 B. The judge may appoint one or more persons to
20 serve as special master on a full- or part-time basis for the
21 purpose of holding detention hearings. A juvenile probation
22 and parole officer shall not be appointed as a special master.
23 The judge shall approve all contracts with special masters and
24 shall fix their hourly compensation, subject to the approval of
25 the director of the administrative office of the courts.

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1 C. Notice of the detention hearing, either oral or
2 written, stating the time, place and purpose of the hearing
3 shall be given by the person designated by the court to the
4 child's parents, guardian or custodian, if they can be found,
5 and to the child. The department shall be provided with
6 reasonable oral or written notification and an opportunity to
7 be heard. At any hearing held pursuant to this subsection, the
8 department may appear as a party.

9 D. At the commencement of the detention hearing,
10 the judge or special master shall advise the parties of their
11 basic rights provided in the Children's Code and shall appoint
12 counsel, guardians and custodians, if appropriate.

13 E. If the judge or special master finds that the
14 child's detention is appropriate under the criteria established
15 by the Children's Code, the judge or special master shall order
16 detention in an appropriate facility in accordance with the
17 Children's Code.

18 F. If the judge or special master finds that
19 detention of the child is not appropriate under the criteria
20 established by the Children's Code, the judge or special master
21 shall order the release of the child, but, in so doing, may
22 order one or more of the following conditions to meet the
23 individual needs of the child:

24 (1) place the child in the custody of a
25 parent, guardian or custodian or under the supervision of an

1 agency agreeing to supervise the child;

2 (2) place restrictions on the child's travel,
3 association with other persons or place of abode during the
4 period of the child's release; or

5 (3) impose any other condition deemed
6 reasonably necessary and consistent with the criteria for
7 detaining children established by the Children's Code,
8 including a condition requiring that the child return to
9 custody as required.

10 G. An order releasing a child on any conditions
11 specified in this section may at any time be amended to impose
12 additional or different conditions of release or to return the
13 child to custody or detention for failure to conform to the
14 conditions originally imposed.

15 H. At the detention hearing, all relevant and
16 material evidence helpful in determining the need for detention
17 may be admitted by the judge or special master even though it
18 would not be admissible in a hearing on the petition.

19 I. If the child is not released at the detention
20 hearing and a parent, guardian or custodian was not notified of
21 the hearing and did not appear or waive appearance at the
22 detention hearing, the judge or special master shall rehear the
23 detention matter without unnecessary delay upon the filing of
24 an affidavit stating the facts and a motion for rehearing.

25 J. If a child is not released at the detention

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1 hearing, the child's detention may be subsequently reviewed by
2 the court or the court may review the child's detention in
3 conjunction with a pretrial conference.

4 K. If a child is not placed within ten days after a
5 disposition hearing, the child may be released and placed under
6 appropriate supervision, so long as the child does not pose a
7 flight risk or substantial risk of harm to [~~himself~~] the
8 child's self or others."

9 Section 15. Section 32A-2-14 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 43, as amended) is amended to read:

11 "32A-2-14. BASIC RIGHTS.--

12 A. A child subject to the provisions of the
13 Delinquency Act is entitled to the same basic rights as an
14 adult, except as otherwise provided in the Children's Code,
15 including rights provided by the Delinquency Act, except as
16 otherwise provided in the Children's Code.

17 B. If after due notice to the parent, guardian or
18 custodian and after a hearing determining indigency, the
19 parent, guardian or custodian is declared indigent by the
20 court, the public defender shall represent the child. If the
21 court finds that the parent, guardian or custodian is
22 financially able to pay for an attorney but is unwilling to do
23 so, the court shall order the parent, guardian or custodian to
24 reimburse the state for public defender representation.

25 C. No person subject to the provisions of the

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1 Delinquency Act who is alleged or suspected of being a
2 delinquent child shall be interrogated or questioned without
3 first advising the child of the child's constitutional rights
4 and securing a knowing, intelligent and voluntary waiver.

5 D. Before any statement or confession may be
6 introduced at a trial or hearing when a child is alleged to be
7 a delinquent child, the state shall prove that the statement or
8 confession offered in evidence was elicited only after a
9 knowing, intelligent and voluntary waiver of the child's
10 constitutional rights was obtained.

11 E. In determining whether the child knowingly,
12 intelligently and voluntarily waived the child's rights, the
13 court shall consider the following factors:

14 (1) the age and education of the respondent;
15 (2) whether the respondent is in custody;
16 (3) the manner in which the respondent was
17 advised of [~~his~~] the respondent's rights;

18 (4) the length of questioning and
19 circumstances under which the respondent was questioned;

20 (5) the condition of the quarters where the
21 respondent was being kept at the time [~~he was~~] of being
22 questioned;

23 (6) the time of day and the treatment of the
24 respondent at the time [~~that he was~~] of being questioned;

25 (7) the mental and physical condition of the

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1 respondent at the time [~~that he was~~] of being questioned; and

2 (8) whether the respondent had the counsel of
3 an attorney, friends or relatives at the time of being
4 questioned.

5 F. Notwithstanding any other provision to the
6 contrary, no confessions, statements or admissions may be
7 introduced against a child under the age of thirteen years on
8 the allegations of the petition. There is a rebuttable
9 presumption that any confessions, statements or admissions made
10 by a child thirteen or fourteen years old to a person in a
11 position of authority are inadmissible.

12 G. An extrajudicial admission or confession made by
13 the child out of court is insufficient to support a finding
14 that the child committed the delinquent acts alleged in the
15 petition unless it is corroborated by other evidence.

16 H. The child and the parent, guardian or custodian
17 of the child shall be advised by the court or its
18 representative that the child shall be represented by counsel
19 at all stages of the proceedings on a delinquency petition,
20 including all post-dispositional court proceedings. If counsel
21 is not retained for the child or if it does not appear that
22 counsel will be retained, counsel shall be appointed for the
23 child.

24 I. A child under the age of thirteen alleged or
25 adjudicated to be a delinquent child shall not be fingerprinted

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1 or photographed for identification purposes without obtaining a
2 court order.

3 J. The court, at any stage of the proceeding on a
4 petition under the Children's Code, may appoint a guardian ad
5 litem for a child who is a party if the child has no parent,
6 guardian or custodian appearing on behalf of the child or if
7 the parent's, guardian's or custodian's interests conflict with
8 those of the child. A party to the proceeding or an employee
9 or representative of a party shall not be appointed as guardian
10 ad litem.

11 K. The court shall appoint a guardian for a child
12 if the court determines that the child does not have a parent
13 or a legally appointed guardian in a position to exercise
14 effective guardianship. No officer or employee of an agency
15 that is vested with the legal custody of the child shall be
16 appointed guardian of the child except when parental rights
17 have been terminated and the agency is authorized to place the
18 child for adoption.

19 L. A person afforded rights under the Delinquency
20 Act shall be advised of those rights at that person's first
21 appearance before the court on a petition under that act.

22 M. A serious youthful offender who is detained
23 prior to trial in an adult facility has a right to bail as
24 provided under SCRA 1986, Rule 5-401. A child held in a
25 juvenile facility designated as a place of detention prior to

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1 adjudication does not have a right to bail but may be released
2 pursuant to the provisions of the Delinquency Act.

3 N. The provisions of the Delinquency Act shall not
4 be interpreted to limit the right of a child to petition a
5 court for a writ of habeas corpus."

6 Section 16. Section 32A-2-16 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 45) is amended to read:

8 "32A-2-16. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
9 DISPOSITIONAL MATTERS--PENALTY.--

10 A. Hearings on petitions shall be conducted by the
11 court separate from other proceedings. A jury trial on the
12 issues of alleged delinquent acts may be demanded by the child,
13 parent, guardian, custodian or counsel in proceedings on
14 petitions alleging delinquency when the offense alleged would
15 be triable by jury if committed by an adult. If a jury is
16 demanded and the child is entitled to a jury trial, the jury's
17 function is limited to that of trier of the factual issue of
18 whether the child committed the alleged delinquent acts. If no
19 jury is demanded, the hearing shall be by the court without a
20 jury. Jury trials shall be conducted in accordance with rules
21 promulgated under the provisions of Subsection B of Section
22 [~~32-1-4~~] 32A-1-5 NMSA 1978. A delinquent child facing a
23 juvenile disposition shall be entitled to a six-member jury.
24 If the children's court attorney has filed a motion to invoke
25 an adult sentence, the child is entitled to a twelve-member

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1 jury. A unanimous verdict is required for all jury trials.
2 The proceedings shall be recorded by stenographic notes or by
3 electronic, mechanical or other appropriate means.

4 B. All hearings to declare a person in contempt of
5 court and all hearings on petitions pursuant to the provisions
6 of the Delinquency Act shall be open to the general public,
7 except where the court in its discretion, after a finding of
8 exceptional circumstances, deems it appropriate to conduct a
9 closed delinquency hearing. Only the parties, their counsel,
10 witnesses and other persons approved by the court may be
11 present at a closed hearing. Those other persons the court
12 finds to have a proper interest in the case or in the work of
13 the court may be admitted by the court to closed hearings on
14 the condition that they refrain from divulging any information
15 concerning the exceptional circumstances that resulted in the
16 need for a closed hearing. Accredited representatives of the
17 news media shall be allowed to be present at closed hearings
18 subject to the conditions that they refrain from divulging
19 information concerning the exceptional circumstances that
20 resulted in the need for a closed hearing and subject to such
21 enabling regulations as the court finds necessary for the
22 maintenance of order and decorum and for the furtherance of the
23 purposes of the Delinquency Act.

24 C. Those persons or parties granted admission to a
25 closed hearing who intentionally divulge information in

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1 violation of Subsection B of this section are guilty of a petty
2 misdemeanor.

3 D. The court shall determine if the allegations of
4 the petition are admitted or denied. If the allegations are
5 denied, the court shall proceed to hear evidence on the
6 petition. The court after hearing all of the evidence bearing
7 on the allegations of delinquency shall make and record its
8 findings on whether the delinquent acts subscribed to the child
9 were committed by the child. If the court finds that the
10 allegations of delinquency have not been established, it shall
11 dismiss the petition and order the child released from any
12 detention or legal custody imposed in connection with the
13 proceedings.

14 E. The court shall make a finding of delinquency
15 based on a valid admission of the allegations of the petition
16 or on the basis of proof beyond a reasonable doubt.

17 F. If the court finds on the basis of a valid
18 admission of the allegations of the petition or on the basis of
19 proof beyond a reasonable doubt that the child is a delinquent,
20 the court may proceed immediately or at a postponed hearing to
21 make disposition of the case.

22 G. In that part of the hearings held under the
23 Delinquency Act on dispositional issues, all relevant and
24 material evidence helpful in determining the questions
25 presented, including oral and written reports, may be received

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1 by the court and may be relied upon to the extent of its
2 probative value even though not competent had it been offered
3 during the part of the hearings on adjudicatory issues.

4 H. On the court's motion or that of a party, the
5 court may continue the hearing on the petition for a reasonable
6 time to receive reports and other evidence in connection with
7 disposition. The court may continue the hearing pending the
8 receipt of the predisposition study and report if that document
9 has not been prepared and received. During any continuances
10 under this subsection, the court shall make an appropriate
11 order for detention or legal custody.

12 I. The court shall not allow the use of physical
13 restraints on a child in the courtroom in any hearing unless
14 the court finds on the record that restraints are reasonably
15 necessary to maintain order, prevent the child's escape or
16 provide for the safety of others in the courtroom."

17 Section 17. Section 32A-2-17 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 46, as amended) is amended to read:

19 "32A-2-17. PREDISPOSITION STUDIES--REPORTS AND
20 EXAMINATIONS.--

21 A. After a petition has been filed and either a
22 finding with respect to the allegations of the petition has
23 been made or a notice of intent to admit the allegations of the
24 petition has been filed, the court may direct that a
25 predisposition study and report to the court be made in writing

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1 by the department or an appropriate agency designated by the
2 court concerning the child, the family of the child, the
3 environment of the child and any other matters relevant to the
4 need for treatment or to appropriate disposition of the case.
5 The following predisposition reports shall be provided to the
6 parties and the court five days before actual disposition or
7 sentencing:

8 (1) the adult probation and parole division of
9 the corrections department shall prepare a predisposition
10 report for a serious youthful offender;

11 (2) the department shall prepare a
12 predisposition report for a serious youthful offender who is
13 convicted of an offense other than first degree murder;

14 (3) the department shall prepare a
15 predisposition report for a youthful offender concerning the
16 youthful offender's amenability to treatment and if:

17 (a) the court determines that a juvenile
18 disposition is appropriate, the department shall prepare a
19 subsequent predisposition report; or

20 (b) the court makes the findings
21 necessary to impose an adult sentence pursuant to Section
22 32A-2-20 NMSA 1978, the adult probation and parole division of
23 the corrections department shall prepare a subsequent
24 predisposition report; and

25 (4) the department shall prepare a

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1 predisposition report for a delinquent offender, upon the
2 court's request.

3 B. Where there are indications that the child may
4 have a mental disorder or developmental disability, the court,
5 on motion by the children's court attorney or that of counsel
6 for the child, may order the child to be examined at a suitable
7 place by a physician or psychiatrist, a licensed psychologist,
8 a licensed professional clinical counselor or a licensed
9 independent social worker prior to a hearing on the merits of
10 the petition. An examination made prior to the hearing or as a
11 part of the predisposition study and report shall be conducted
12 on an outpatient basis, unless the court finds that placement
13 in a hospital or other appropriate facility is necessary.

14 C. The court, after a hearing, may order
15 examination by a physician or psychiatrist, a licensed
16 psychologist or a licensed professional clinical counselor or a
17 licensed independent social worker of a parent or custodian
18 whose ability to care for or supervise a child is an issue
19 before the court.

20 D. The court may order that a child adjudicated as
21 a delinquent child be [~~transferred to the facility designated~~
22 ~~by the secretary of the department for a period of not more~~
23 ~~than fifteen days within a three hundred sixty-five day time~~
24 ~~period~~] administered a predispositional evaluation by a
25 professional designated by the department for purposes of

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1 diagnosis, with direction that the court be given a report
2 indicating what disposition appears most suitable when the
3 interests of the child and the public are considered.

4 ~~[E. Once the child is committed, the department~~
5 ~~shall determine when the child is released. The release shall~~
6 ~~be any time after commitment, but not more than fifteen days~~
7 ~~after commitment. Upon petition by the department to the~~
8 ~~court, the judge may extend the commitment for an additional~~
9 ~~fifteen days upon good cause shown.] The evaluation shall be~~
10 ~~completed within fifteen days of the court's order and the~~
11 ~~preference shall be for performing the evaluation in the~~
12 ~~child's community.~~

13 E. If a child is detained for purposes of
14 performing a predispositional evaluation, it shall be completed
15 within fifteen days and in no event shall a child be detained
16 for more than fifteen days within a three-hundred-sixty-five-
17 day period for a predispositional evaluation, unless for good
18 cause shown."

19 Section 18. Section 32A-2-19 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 48, as amended) is amended to read:

21 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
22 OFFENDER.--

23 A. At the conclusion of the dispositional hearing,
24 the court may make and include in the dispositional judgment
25 its findings on the following:

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1 (1) the interaction and interrelationship of
2 the child with the child's parents and siblings and any other
3 person who may significantly affect the child's best interests;

4 (2) the child's adjustment to [~~his~~] the
5 child's home, school and community;

6 (3) the mental and physical health of all
7 individuals involved, including consideration of such factors
8 as the child's brain development, maturity, trauma history and
9 disability;

10 (4) the wishes of the child as to [~~his~~] the
11 child's custodian;

12 (5) the wishes of the child's parents as to
13 the child's custody;

14 (6) whether there exists a relative of the
15 child or other individual who, after study by the department,
16 is found to be qualified to receive and care for the child;

17 (7) the availability of services recommended
18 in the predisposition report; and

19 (8) the ability of the parents to care for the
20 child in the home.

21 B. If a child is found to be delinquent, the court
22 may impose a fine not to exceed the fine that could be imposed
23 if the child were an adult and may enter its judgment making
24 any of the following dispositions for the supervision, care and
25 rehabilitation of the child:

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1 (1) transfer legal custody to the department,
2 an agency responsible for the care and rehabilitation of
3 delinquent children, which shall receive the child at a
4 facility designated by the secretary of the department as a
5 juvenile reception facility. The department shall thereafter
6 determine the appropriate placement, supervision and
7 rehabilitation program for the child. The judge may include
8 recommendations for placement of the child. Commitments are
9 subject to limitations and modifications set forth in Section
10 32A-2-23 NMSA 1978. The types of commitments include:

11 (a) a short-term commitment of one year
12 in a facility for the care and rehabilitation of adjudicated
13 delinquent children. No more than nine months shall be served
14 at the facility and no less than ninety days shall be served on
15 [~~parole~~] supervised release, unless: 1) a petition to extend
16 the commitment has been filed prior to the commencement of
17 [~~parole~~] supervised release; 2) the commitment has been
18 extended pursuant to Section 32A-2-23 NMSA 1978; or 3) [~~parole~~]
19 supervised release is revoked pursuant to Section 32A-2-25 NMSA
20 1978;

21 (b) a long-term commitment for no more
22 than two years in a facility for the care and rehabilitation of
23 adjudicated delinquent children. No more than twenty-one
24 months shall be served at the facility and no less than ninety
25 days shall be served on [~~parole~~] supervised release, unless:

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1) [~~parole~~] supervised release is revoked pursuant to Section 32A-2-25 NMSA 1978; or 2) the commitment is extended pursuant to Section 32A-2-23 NMSA 1978;

(c) if the child is a delinquent offender who committed one of the criminal offenses set forth in Subsection I of Section 32A-2-3 NMSA 1978, a commitment to age twenty-one, unless sooner discharged; or

(d) if the child is a youthful offender, a commitment to age twenty-one, unless sooner discharged;

(2) place the child on probation under those conditions and limitations as the court may prescribe;

(3) place the child in a local detention facility that has been certified in accordance with the provisions of Section 32A-2-4 NMSA 1978 for a period not to exceed fifteen days within a three hundred sixty-five day time period; or if a child is found to be delinquent solely on the basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA 1978, the court shall only enter a judgment placing the child on probation or ordering restitution or imposing a fine not to exceed the fine that could be imposed if the child were an adult or any combination of these dispositions; or

(4) if a child is found to be delinquent solely on the basis of Paragraph (2), (3) or (4) of Subsection A of Section 32A-2-3 NMSA 1978, the court may make any

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1 disposition provided by this section and may enter its judgment
2 placing the child on probation and, as a condition of
3 probation, transfer custody of the child to the department for
4 a period not to exceed six months without further order of the
5 court; provided that this transfer shall not be made unless the
6 court first determines that the department is able to provide
7 or contract for adequate and appropriate treatment for the
8 child and that the treatment is likely to be beneficial.

9 C. When the child is an Indian child, the Indian
10 child's cultural needs shall be considered in the dispositional
11 judgment and reasonable access to cultural practices and
12 traditional treatment shall be provided.

13 D. A child found to be delinquent shall not be
14 committed or transferred to a penal institution or other
15 facility used for the execution of sentences of persons
16 convicted of crimes.

17 E. Whenever the court vests legal custody in an
18 agency, institution or department, it shall transmit with the
19 dispositional judgment copies of the clinical reports,
20 predisposition study and report and other information it has
21 pertinent to the care and treatment of the child.

22 F. Prior to any child being placed in the custody
23 of the department, the department shall be provided with
24 reasonable oral or written notification and an opportunity to
25 be heard.

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1 G. In addition to any other disposition pursuant to
2 Subsection B of this section, the court may make an abuse or
3 neglect report for investigation and proceedings as provided
4 for in the Abuse and Neglect Act. The report may be made to a
5 local law enforcement agency, the department or a tribal law
6 enforcement or social service agency for an Indian child
7 residing in Indian country.

8 H. In addition to any other disposition pursuant to
9 this section or any other penalty provided by law, if a child
10 fifteen years of age or older is adjudicated delinquent on the
11 basis of Paragraph (2), (3) or (4) of Subsection A of Section
12 32A-2-3 NMSA 1978, the child's driving privileges may be denied
13 or the child's driver's license may be revoked for a period of
14 ninety days. For a second or a subsequent adjudication, the
15 child's driving privileges may be denied or the child's
16 driver's license revoked for a period of one year. Within
17 twenty-four hours of the dispositional judgment, the court may
18 send to the motor vehicle division of the taxation and revenue
19 department the order adjudicating delinquency. Upon receipt of
20 an order from the court adjudicating delinquency, the director
21 of the motor vehicle division of the taxation and revenue
22 department may revoke or deny the delinquent's driver's license
23 or driving privileges. Nothing in this section may prohibit
24 the delinquent from applying for a limited driving privilege
25 pursuant to Section 66-5-35 NMSA 1978 or an ignition interlock

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1 license pursuant to the Ignition Interlock Licensing Act, and
2 nothing in this section precludes the delinquent's
3 participation in an appropriate educational, counseling or
4 rehabilitation program.

5 I. In addition to any other disposition pursuant to
6 this section or any other penalty provided by law, when a child
7 is adjudicated delinquent on the basis of Paragraph (6) of
8 Subsection A of Section 32A-2-3 NMSA 1978, the child shall
9 perform the mandatory community service set forth in Section
10 30-15-1.1 NMSA 1978. When a child fails to completely perform
11 the mandatory community service, the name and address of the
12 child's parent or legal guardian shall be published in a
13 newspaper of general circulation, accompanied by a notice that
14 [he] the parent or legal guardian is the parent or legal
15 guardian of a child adjudicated delinquent for committing
16 graffiti."

17 Section 19. Section 32A-2-20 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 49, as amended) is amended to read:

19 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

20 A. The court has the discretion to invoke either an
21 adult sentence or juvenile sanctions on a youthful offender.
22 The children's court attorney shall file a notice of intent to
23 invoke an adult sentence within ten working days of the filing
24 of the petition, provided that the court may extend the time
25 for filing of the notice of intent to invoke an adult sentence,

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1 for good cause shown, prior to the adjudicatory hearing. A
2 preliminary hearing by the court or a hearing before a grand
3 jury shall be held, within ten days after the filing of the
4 intent to invoke an adult sentence, to determine whether
5 probable cause exists to support the allegations contained in
6 the petition.

7 B. If the children's court attorney has filed a
8 notice of intent to invoke an adult sentence and the child is
9 adjudicated as a youthful offender, the court shall make the
10 following findings in order to invoke an adult sentence:

11 (1) the child is not amenable to treatment or
12 rehabilitation as a child in available facilities; and

13 (2) the child is not eligible for commitment
14 to an institution for children with developmental disabilities
15 or mental disorders.

16 C. In making the findings set forth in Subsection B
17 of this section, the judge shall consider the following
18 factors:

19 (1) the seriousness of the alleged offense;

20 (2) whether the alleged offense was committed
21 in an aggressive, violent, premeditated or willful manner;

22 (3) whether a firearm was used to commit the
23 alleged offense;

24 (4) whether the alleged offense was against
25 persons or against property, greater weight being given to

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1 offenses against persons, especially if personal injury
2 resulted;

3 (5) the [~~sophistication and~~] maturity of the
4 child as determined by consideration of the child's home,
5 environmental situation, [~~emotional attitude and~~] social and
6 emotional health, pattern of living, brain development, trauma
7 history and disability;

8 (6) the record and previous history of the
9 child;

10 (7) the prospects for adequate protection of
11 the public and the likelihood of reasonable rehabilitation of
12 the child by the use of procedures, services and facilities
13 currently available; and

14 (8) any other relevant factor, provided that
15 factor is stated on the record.

16 D. If a child has previously been sentenced as an
17 adult pursuant to the provisions of this section, there shall
18 be a rebuttable presumption that the child is not amenable to
19 treatment or rehabilitation as a child in available facilities.

20 E. If the court invokes an adult sentence, the
21 court may sentence the child to less than, but shall not
22 exceed, the mandatory adult sentence. A youthful offender
23 given an adult sentence shall be treated as an adult offender
24 and shall be transferred to the legal custody of an agency
25 responsible for incarceration of persons sentenced to adult

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1 sentences. This transfer terminates the jurisdiction of the
2 court over the child with respect to the delinquent acts
3 alleged in the petition.

4 F. If a juvenile disposition is appropriate, the
5 court shall follow the provisions set forth in Section
6 32A-2-19 NMSA 1978. A youthful offender may be subject to
7 extended commitment in the care of the department until the age
8 of twenty-one, pursuant to the provisions of Section
9 32A-2-23 NMSA 1978.

10 G. A child fourteen years of age or older, charged
11 with first degree murder, but not convicted of first degree
12 murder and found to have committed a youthful offender offense
13 as set forth in Subsection I of Section 32A-2-3 NMSA 1978, is
14 subject to the dispositions set forth in this section.

15 H. A child fourteen years of age or older charged
16 with first degree murder, but found to have committed a
17 delinquent act that is neither first degree murder nor a
18 youthful offender offense as set forth in Subsection I of
19 Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent
20 subject to the dispositions set forth in Section 32A-2-19 NMSA
21 1978."

22 Section 20. Section 32A-2-23 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 52, as amended) is amended to read:

24 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
25 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

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1 A. A judgment transferring legal custody of an
2 adjudicated delinquent child to an agency responsible for the
3 care and rehabilitation of delinquent children divests the
4 court of jurisdiction at the time of transfer of custody,
5 unless the transfer of legal custody is for a commitment not
6 exceeding fifteen days pursuant to the provisions of
7 Section 32A-2-19 NMSA 1978, in which case the court retains
8 jurisdiction ~~[and:~~

9 ~~(1) the juvenile parole board pursuant to the~~
10 ~~Juvenile Parole Board Act has the exclusive power to parole or~~
11 ~~release the child, subject to the provisions of Section 32A-7-8~~
12 ~~NMSA 1978;~~

13 ~~(2) the supervision of a child after release~~
14 ~~under Paragraph (1) of this subsection shall be conducted by~~
15 ~~the department; and~~

16 ~~(3) the period of time a child absconds from~~
17 ~~parole or probation supervision shall toll all time limits for~~
18 ~~the requirement of filing a petition to revoke probation or~~
19 ~~parole and shall toll the computation of the period of~~
20 ~~probation or parole supervision pursuant to the provisions of~~
21 ~~the Delinquency Act].~~

22 B. A judgment of probation or protective
23 supervision shall remain in force for an indeterminate period
24 not to exceed the term of commitment from the date entered.

25 C. A child shall be released by an agency and

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1 probation or supervision shall be terminated by juvenile
2 probation and parole services or the agency providing
3 supervision when it appears that the purpose of the order has
4 been achieved before the expiration of the period of the
5 judgment. A release or termination and the reasons therefor
6 shall be reported promptly to the court in writing by the
7 releasing authority.

8 D. Prior to the expiration of a short-term
9 commitment of one year, as provided for in Section 32A-2-19
10 NMSA 1978, the court may extend the judgment for up to one six-
11 month period if the court finds that the extension is necessary
12 to safeguard the welfare of the child or the public safety. If
13 a short-term commitment is extended, the mandatory ninety-day
14 [~~parole~~] supervised release, as required by Section 32A-2-19
15 NMSA 1978, shall be included in the extension. Notice and
16 hearing are required for any extension of a juvenile's
17 commitment.

18 E. Prior to the expiration of a long-term
19 commitment, as provided for in Section 32A-2-19 NMSA 1978, the
20 court may extend the judgment for additional periods of one
21 year until the child reaches the age of twenty-one if the court
22 finds that the extension is necessary to safeguard the welfare
23 of the child or the public safety. If a long-term commitment
24 is extended, the mandatory ninety-day [~~parole~~] supervised
25 release, as required by Section 32A-2-19 NMSA 1978, shall be

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1 included in the extension. Notice and hearing are required for
2 any extension of a juvenile's commitment.

3 F. Prior to the expiration of a judgment of
4 probation, the court may extend the judgment for an additional
5 period of one year until the child reaches the age of twenty-
6 one if the court finds that the extension is necessary to
7 protect the community or to safeguard the welfare of the child.

8 G. The court may dismiss a motion if it finds after
9 preliminary investigation that the motion is without substance.
10 If the court is of the opinion that the matter should be
11 reviewed, it may, upon notice to all necessary parties, proceed
12 to a hearing in the manner provided for hearings on petitions
13 alleging delinquency. The court may terminate a judgment if it
14 finds that the child is no longer in need of care, supervision
15 or rehabilitation or it may enter a judgment extending or
16 modifying the original judgment if it finds that action
17 necessary to safeguard the child or the public interest.

18 H. A child may make a motion to modify a children's
19 court or adult disposition within thirty days of the judge's
20 decision. If the court is of the opinion that the matter
21 should be reviewed, it may, upon notice to all necessary
22 parties, proceed to a hearing in the manner provided for
23 hearings on petitions alleging delinquency.

24 I. The department may seek a bench warrant from the
25 court when the child absconds from supervised release."

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1 Section 21. A new Section 32A-2-23.1 NMSA 1978 is enacted
2 to read:

3 "32A-2-23.1. [NEW MATERIAL] RELEASE ELIGIBILITY.--

4 A. The department shall have exclusive jurisdiction
5 and authority to release an adjudicated delinquent child during
6 the term of the child's commitment, consistent with the
7 provisions of the Victims of Crime Act. In determining whether
8 to release a child, the department shall give due consideration
9 to public safety, the extent to which the child has been
10 rehabilitated, the adequacy and suitability of the proposed
11 release plan and the needs and best interests of the child,
12 including the child's need for behavioral health or medical
13 services that are not available in facilities for adjudicated
14 delinquent children.

15 B. The decision to grant or deny release shall be
16 made by the secretary of children, youth and families or the
17 secretary's designee. The department may impose such
18 conditions of release as it deems appropriate.

19 C. A child is eligible for release any time after
20 the entry of a judgment transferring legal custody to the
21 department, and the department may consider a reasonable
22 request for release from the child at any time sixty days after
23 the child has been committed.

24 D. In the event release for a child is denied by
25 the department after release is recommended for the child by

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1 the juvenile public safety advisory board, or release is
2 approved by the department after the board has recommended that
3 the child not be released, within ten days, the board may
4 request a review of the decision by the court of the judicial
5 district from which legal custody of the child was transferred,
6 and the department shall transmit the child's records to the
7 court. The court shall have jurisdiction to review the matter
8 without conducting a formal hearing and to issue an order that
9 either denies or grants release to the child. If the board
10 requests review under this section, the child shall not be
11 released until such time as the court has issued a decision.
12 If the board does not petition the district court for review of
13 the department's decision to grant or deny release within ten
14 days of the department's decision, the department's decision
15 shall be final, and the department shall release the child or
16 continue the commitment in accordance with the terms of its
17 decision.

18 E. The secretary of children, youth and families or
19 the secretary's designee may review the case of any child upon
20 the child's or the juvenile public safety advisory board's
21 reasonable request at any time after release is denied."

22 Section 22. A new Section 32A-2-23.2 NMSA 1978 is enacted
23 to read:

24 "32A-2-23.2. [NEW MATERIAL] RELEASE PROCEEDINGS.--

25 A. When the department determines that a child is

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1 ready to be released, it shall provide a list of children to
2 the juvenile public safety advisory board at least thirty-five
3 days prior to the next regularly scheduled release
4 consideration meeting. The department shall ensure that all
5 other notifications of a pending release proceeding are
6 accomplished consistent with the provisions of the Victims of
7 Crime Act.

8 B. Release consideration meetings shall be held at
9 least quarterly, are not open to the public and shall include
10 the child, a quorum of the board and a representative of the
11 department."

12 Section 23. Section 32A-2-24 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 53) is amended to read:

14 "32A-2-24. PROBATION REVOCATION--DISPOSITION.--

15 A. A child on probation incident to an adjudication
16 as a delinquent child who violates a term of the probation may
17 be proceeded against in a probation revocation proceeding. A
18 proceeding to revoke probation shall be begun by filing in the
19 original proceeding a petition styled as a "petition to revoke
20 probation". Petitions to revoke probation shall be screened,
21 reviewed and prepared in the same manner and shall contain the
22 same information as petitions alleging delinquency. Procedures
23 of the Delinquency Act regarding taking into custody and
24 detention shall apply. The petition shall state the terms of
25 probation alleged to have been violated and the factual basis

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1 for these allegations.

2 B. The standard of proof in probation revocation
3 proceedings shall be evidence beyond a reasonable doubt and the
4 hearings shall be before the court without a jury unless a jury
5 trial is demanded as set forth in Subsection C of this section.

6 In all other respects, proceedings to revoke probation shall be
7 governed by the procedures, rights and duties applicable to
8 proceedings on a delinquency petition. If a child is found to
9 have violated a term of [~~his~~] the child's probation, the court
10 may extend the period of probation or make any other judgment
11 or disposition that would have been appropriate in the original
12 disposition of the case.

13 C. A jury trial may be demanded by the child or the
14 child's parent, guardian, custodian or counsel in probation
15 revocation proceedings when the offense alleged would be
16 triable by jury if committed by an adult. If a jury trial is
17 demanded and the child is entitled to a jury trial, the
18 procedures and rights shall be as set forth in Section 32A-2-16
19 NMSA 1978."

20 Section 24. Section 32A-2-26 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 55, as amended) is amended to read:

22 "32A-2-26. SEALING OF RECORDS.--

23 A. On motion by or on behalf of a person who has
24 been the subject of a delinquency petition or on the court's
25 own motion, the court shall vacate its findings, orders and

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1 judgments on the petition and order the legal and social files
2 and records of the court, probation services, law enforcement
3 and any other agency in the case sealed. [~~If requested in the~~
4 ~~motion, the court shall also order law enforcement files and~~
5 ~~records sealed.~~] An order sealing records and files shall be
6 entered if the court finds that:

7 (1) two years have elapsed since the final
8 release of the person from legal custody and supervision or two
9 years have elapsed since the entry of any other judgment not
10 involving legal custody or supervision; [~~and~~]

11 (2) the person has not, within the two years
12 immediately prior to filing the motion, been convicted of a
13 felony or of a misdemeanor involving moral turpitude or been
14 found delinquent by a court and no proceeding is pending
15 seeking such a conviction or finding; and

16 (3) the person is eighteen years of age or
17 older or the court finds that good cause exists to seal the
18 records prior to the child's eighteenth birthday.

19 B. Reasonable notice of the motion shall be given
20 to:

21 (1) the children's court attorney;
22 (2) the authority granting the release;
23 (3) the law enforcement officer, department
24 and central depository having custody of the law enforcement
25 files and records [~~if those records are included in the~~

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1 motion]; and

2 (4) any other agency having custody of records
3 or files subject to the sealing order.

4 C. Upon the entry of the sealing order, the
5 proceedings in the case shall be treated as if they never
6 occurred and all index references shall be deleted. The court,
7 law enforcement officers and departments and agencies shall
8 reply, and the person may reply, to an inquiry that no record
9 exists with respect to the person. Copies of the sealing order
10 shall be sent to each agency or official named in the order.

11 D. Inspection of the files and records or the
12 release of information in the records included in the sealing
13 order may thereafter be permitted by the court only:

14 (1) upon motion by the person who is the
15 subject of the records and only to those persons named in the
16 motion; and

17 (2) in its discretion, in an individual case,
18 to any clinic, hospital or agency that has the person under
19 care or treatment or to other persons engaged in fact finding
20 or research.

21 E. Any finding of delinquency or need of services
22 or conviction of a crime subsequent to the sealing order may at
23 the court's discretion be used by the court as a basis to set
24 aside the sealing order.

25 F. A person who has been the subject of a petition

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1 filed pursuant to the provisions of the Delinquency Act shall
2 be notified in writing by the juvenile probation and parole
3 officer of the right to have records sealed at the expiration
4 of the disposition. The notification shall also be provided to
5 the person at the time of a preliminary inquiry and at the time
6 of the person's release from legal custody or supervision. The
7 notification shall include a copy of this statute.

8 ~~[G. A person who is not the subject of a~~
9 ~~delinquency petition or a person who is determined by the court~~
10 ~~not to be a delinquent offender shall have his files and~~
11 ~~records automatically sealed by the court.~~

12 ~~H. If two years have elapsed since a person was~~
13 ~~released from legal custody and supervision and the department~~
14 ~~has not received any new allegations of delinquency regarding~~
15 ~~the person, that person's files and records shall be~~
16 ~~automatically sealed.]~~

17 G. When a person who is not the subject of a
18 delinquency petition reaches the age of eighteen years, unless
19 sooner for good cause shown, the department shall seal all
20 files and records in the case and give notice to the central
21 depository having custody of the law enforcement files that all
22 records for that person have been sealed. Upon receipt of
23 notice from the department, the central depository having
24 custody of the law enforcement files shall seal all files and
25 records.

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1 H. After sealing, the department may store and use
2 a person's records for research and reporting purposes, subject
3 to the confidentiality provisions of Section 32A-2-32 NMSA 1978
4 and other applicable federal and state laws."

5 Section 25. Section 32A-2-29 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 58, as amended) is amended to read:

7 "32A-2-29. MOTOR VEHICLE CODE VIOLATIONS.--

8 A. The municipal, magistrate or metropolitan court
9 shall have original exclusive jurisdiction over all Motor
10 Vehicle Code or municipal traffic code violations when the
11 person alleged to have committed the violation is a child, with
12 the exception of those violations contained in Paragraph (1) of
13 Subsection A of Section 32A-2-3 NMSA 1978 and all traffic
14 offenses alleged to have been committed by the child arising
15 out of the same occurrence pursuant to Subsection B of this
16 section.

17 B. If the court acquires jurisdiction over a child
18 pursuant to [~~any of those Motor Vehicle Code violations~~
19 ~~contained in Paragraph (1) of Subsection A of]~~ Section 32A-2-3
20 NMSA 1978, it shall have exclusive jurisdiction over all
21 traffic offenses alleged to have been committed by the child
22 arising out of the same occurrence.

23 C. Disposition as to any delinquent offenses shall
24 be pursuant to the Delinquency Act.

25 D. Disposition as to a Motor Vehicle Code or

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1 municipal traffic code violation in which jurisdiction is
2 acquired as set forth in Subsection B of this section shall be
3 pursuant to the respective Motor Vehicle Code or municipal
4 traffic code.

5 ~~[G.]~~ E. All traffic offenses ~~[which]~~ that the child
6 is found to have committed by the municipal, magistrate or
7 metropolitan court or for which the child is adjudicated
8 delinquent by the children's court shall be subject to the
9 reporting requirements and the suspension and revocation
10 provisions of the Motor Vehicle Code and shall not be subject
11 to the confidentiality provisions of the Delinquency Act.

12 ~~[D.]~~ F. Only the children's court may incarcerate a
13 child who has been found guilty of any Motor Vehicle Code or
14 municipal traffic code violations."

15 Section 26. Section 32A-2-32 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 61, as amended) is amended to read:

17 "32A-2-32. CONFIDENTIALITY--RECORDS.--

18 A. All ~~[social]~~ records pertaining to the child,
19 including all related social records, behavioral health
20 screenings, diagnostic evaluations, psychiatric reports,
21 medical reports, social studies reports, records from local
22 detention facilities, client-identifying records from
23 facilities for the care and rehabilitation of delinquent
24 children, pre-parole or supervised release reports and
25 supervision histories obtained by the juvenile probation

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1 office, parole officers and ~~[parole]~~ the juvenile public safety
2 advisory board or in possession of the department, are
3 confidential and shall not be disclosed directly or indirectly
4 to the public.

5 B. The disclosure of all mental health and
6 developmental disability records shall be made pursuant to the
7 Children's Mental Health and Developmental Disabilities Act.

8 ~~[B.]~~ C. The records described in Subsection A of
9 this section, other than mental health and developmental
10 disability records, shall be disclosed only to:

11 (1) court personnel;

12 (2) the child's court appointed special
13 advocates;

14 (3) the child's attorney or guardian ad litem
15 representing the child in any matter;

16 (4) department personnel;

17 ~~[(5) any local substitute care review board or~~
18 ~~any agency contracted to implement local substitute care review~~
19 ~~boards;~~

20 ~~[(6)]~~ (5) corrections department personnel;

21 ~~[(7)]~~ (6) law enforcement officials when the
22 request is related to the investigation of a crime;

23 ~~[(8)]~~ (7) district attorneys or children's
24 court attorneys;

25 ~~[(9) any state government social services~~

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1 ~~agency in any state;~~

2 ~~(10) those persons or entities of a child's~~
3 ~~Indian tribe specifically authorized to inspect such records~~
4 ~~pursuant to the federal Indian Child Welfare Act of 1978 or any~~
5 ~~regulations promulgated thereunder;~~

6 ~~(11) tribal juvenile justice system and social~~
7 ~~service representatives;~~

8 ~~(12) a foster parent, if the records are those~~
9 ~~of a child currently placed with that foster parent or of a~~
10 ~~child being considered for placement with that foster parent~~
11 ~~when the disclosure of the information is necessary for the~~
12 ~~child's treatment or care and shall include only that~~
13 ~~information necessary to provide for treatment and care of the~~
14 ~~child;~~

15 ~~(13) school personnel involved with the child~~
16 ~~if the records concern the child's educational needs as~~
17 ~~necessary for the child's educational planning and shall~~
18 ~~include only that information necessary to provide for the~~
19 ~~child's educational needs;~~

20 ~~(14) health care or mental health~~
21 ~~professionals involved in the evaluation or treatment of the~~
22 ~~child, the child's parents, guardians or custodian or other~~
23 ~~family members;~~

24 ~~(15) representatives of the protection and~~
25 ~~advocacy system;~~

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1 ~~(16) the child's parent, guardian or legal~~
2 ~~eustodian when the disclosure of the information is necessary~~
3 ~~for the child's treatment or care and shall include only that~~
4 ~~information necessary to provide for the treatment or care of~~
5 ~~the child; and]~~

6 (8) any of the following if the person, agency
7 or institution receiving the information has entered into a
8 written confidentiality agreement with the department or other
9 disclosing entity regarding the protection of the disclosed
10 information:

11 (a) a state government social services
12 agency in any state;

13 (b) those persons or entities of a
14 child's Indian tribe specifically authorized to inspect such
15 records pursuant to the federal Indian Child Welfare Act of
16 1978 or any regulations promulgated under that act;

17 (c) tribal juvenile justice system and
18 social service representatives;

19 (d) a foster parent, if the records are
20 those of a child currently placed with that foster parent or of
21 a child being considered for placement with that foster parent,
22 when the disclosure of the information is necessary for the
23 child's treatment or care and shall include only that
24 information necessary to provide for treatment and care of the
25 child;

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1 (e) school personnel involved with the
2 child if the records concern the child's educational needs, but
3 shall only include that information necessary to provide for
4 the child's educational planning and needs;

5 (f) a health care or mental health
6 professional involved in the evaluation or treatment of the
7 child, the child's parents, guardians or custodian or other
8 family members;

9 (g) representatives of the protection
10 and advocacy system; and

11 (h) the child's parent, guardian or
12 legal custodian when the disclosure of the information is
13 necessary for the child's treatment or care and shall include
14 only that information necessary to provide for the treatment or
15 care of the child;

16 ~~(17)~~ (9) any other person or entity, by
17 order of the court, having a legitimate interest in the case or
18 the work of the court who agrees not to otherwise release the
19 records; and

20 (10) the child, if fourteen years of age or
21 older.

22 D. If disclosure of otherwise confidential records
23 is made to the child or any other person or entity pursuant to
24 a valid release of information signed by the child, all victim
25 or witness identifying information shall be redacted or

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1 otherwise deleted.

2 [~~G-~~] E. Whoever intentionally and unlawfully
3 releases any information or records closed to the public
4 pursuant to this section or releases or makes other unlawful
5 use of records in violation of this section is guilty of a
6 petty misdemeanor.

7 [~~D-~~] F. The department shall promulgate rules for
8 implementing disclosure of records pursuant to this section and
9 in compliance with state and federal law and the Children's
10 Court Rules."

11 Section 27. Section 32A-3B-8 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 80, as amended) is amended to read:

13 "32A-3B-8. BASIC RIGHTS.--

14 A. A child subject to the provisions of the
15 Children's Code is entitled to the same basic rights as an
16 adult, except as otherwise provided in the Children's Code.

17 B. In proceedings on a petition alleging a family
18 in need of court-ordered services, the court may appoint
19 counsel if appointment of counsel would serve the interests of
20 justice.

21 C. In proceedings on a petition alleging a family
22 in need of court-ordered services, the court shall appoint a
23 guardian ad litem for a child under the age of fourteen and the
24 court shall appoint an attorney for a child fourteen years of
25 age or older at the inception of the proceedings. An officer

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1 or employee of an agency vested with legal custody of the child
2 shall not be appointed as a guardian ad litem or attorney for
3 the child. Only an attorney with appreciable training or
4 experience shall be appointed as guardian ad litem of or
5 attorney for the child.

6 D. When a child reaches fourteen years of age, the
7 child's guardian ad litem shall continue as the child's
8 attorney; provided that the court shall appoint a different
9 attorney for the child if:

10 (1) the child requests a different attorney;

11 (2) the guardian ad litem requests to be
12 removed; or

13 (3) the court determines that the appointment
14 of a different attorney is appropriate.

15 ~~[D.]~~ E. Whenever it is reasonable and appropriate,
16 the court shall appoint a guardian ad litem or attorney who is
17 knowledgeable about the child's cultural background.

18 ~~[E.]~~ F. A person afforded rights pursuant to the
19 provisions of the Children's Code shall be advised of those
20 rights at that person's first appearance before the court on a
21 petition filed under the Children's Code.

22 ~~[F.]~~ G. A child of an alleged or adjudicated family
23 in need of court-ordered services shall not be fingerprinted or
24 photographed for identification purposes, unless pursuant to a
25 court order."

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1 Section 28. Section 32A-3B-12 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 84) is amended to read:

3 "32A-3B-12. ADJUDICATORY HEARING--TIME LIMITATIONS.--

4 A. An adjudicatory hearing for an alleged family in
5 need of court-ordered services shall be commenced and a prima
6 facie case presented within ninety days after the [~~latest of~~
7 ~~the following dates:~~

8 ~~(1) the date that the petition is served on~~
9 ~~the respondent;~~

10 ~~(2) if the trial court orders a mistrial or a~~
11 ~~new trial, the date the order is filed; or~~

12 ~~(3) in the event of an appeal, the date that~~
13 ~~the mandate or order disposing of the appeal is filed in~~
14 ~~district court] date of service on the respondent.~~

15 B. The children's court attorney shall represent
16 the state at the adjudicatory hearing.

17 C. [~~When~~] If the adjudicatory hearing is not
18 commenced or a prima facie case is not presented within the
19 time limits specified in this section or within the period of
20 any extension of those time limits, the petition shall be
21 dismissed with prejudice."

22 Section 29. Section 32A-3B-16 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 88) is amended to read:

24 "32A-3B-16. DISPOSITIONAL JUDGMENT.--

25 A. At the conclusion of the dispositional hearing,

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1 the court shall set forth its findings on the following issues
2 in the dispositional judgment:

3 (1) the ability of the parent and child to
4 share a residence;

5 (2) the interaction and interrelationship of
6 the child with ~~his~~ the child's parent, ~~his~~ siblings and any
7 other person who may significantly affect the child's best
8 interest;

9 (3) the child's adjustment to ~~his~~ home,
10 school and community;

11 (4) whether the child's educational needs are
12 being met;

13 (5) the mental and physical health of all
14 individuals involved;

15 (6) the wishes of the child as to ~~his~~ the
16 child's custodian;

17 (7) the wishes of the child's parent, guardian
18 or custodian as to the child's custody;

19 (8) whether there exists a relative of the
20 child or any other individual who, after study by the
21 department, is found to be qualified to receive and care for
22 the child;

23 (9) the availability of services recommended
24 in the treatment plan;

25 (10) the department's efforts to work with the

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1 parent and child in the home and a description of the in-home
2 treatment programs that the department has considered and
3 rejected;

4 (11) whether the placement preferences set
5 forth in the federal Indian Child Welfare Act of 1978 or the
6 placement preferences of the child's Indian tribe have been
7 incorporated into the plan. When placement preferences have
8 not been incorporated into the plan, an explanation shall be
9 clearly stated and supported; ~~and~~

10 (12) when the child is an Indian child,
11 whether the ~~[family service]~~ plan provides for maintaining the
12 Indian child's cultural ties; and

13 (13) when the child is an undocumented
14 immigrant child, whether the family services plan included
15 referral to nongovernmental agencies that may be able to assist
16 the child, and family when appropriate, in addressing
17 immigration status.

18 B. When there is an adjudication regarding a family
19 in need of court-ordered services, the court shall enter
20 judgment and make any of the following dispositions:

21 (1) permit the child to remain with the
22 child's parent, guardian or custodian, subject to conditions
23 and limitations the court may prescribe;

24 (2) place the child under the protective
25 supervision of the department;

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- 1 (3) transfer legal custody of the child to:
2 (a) the department;
3 (b) an agency responsible for the care
4 of neglected or abused children; or
5 (c) the child's noncustodial parent, if
6 that is found to be in the child's best interests; or
7 (4) if the evidence indicates that the child's
8 educational needs are not being met, the local education agency
9 may be joined as a party and directed to assess the child's
10 needs within forty-five days, attempt to meet the child's
11 educational needs and document its efforts to meet the child's
12 educational needs.

13 C. Unless a child of an adjudicated family in need
14 of court-ordered services is also found to be a delinquent
15 child, the child shall not be confined in an institution
16 established for the long-term care and rehabilitation of
17 delinquent children or in a facility for the detention of
18 alleged delinquent children.

19 D. When the child is an Indian child, the child's
20 cultural needs shall be considered during dispositional
21 judgment and, when reasonable, access to cultural practices and
22 traditional treatment shall be provided to the Indian child."

23 Section 30. Section 32A-3B-18 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 90) is amended to read:

25 "32A-3B-18. DISPOSITIONAL JUDGMENTS--TIME LIMITATIONS--
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1 MODIFICATION, TERMINATION OR EXTENSION OF COURT ORDER.--

2 A. A judgment vesting legal custody of a child in
3 an agency shall remain in force for an indeterminate period not
4 exceeding two years from the date entered.

5 B. A judgment vesting legal custody of a child in
6 an individual, other than the child's parent, shall remain in
7 force for two years from the date entered unless terminated
8 sooner by court order.

9 C. A judgment vesting legal custody of a child in
10 the child's parent or a permanent guardian shall remain in
11 force for an indeterminate period from the date entered until
12 terminated by court order or until the child is emancipated or
13 reaches the age of majority.

14 D. At any time prior to expiration, a judgment
15 vesting legal custody or granting protective supervision may be
16 modified, revoked or extended on motion by a party [~~or the~~],
17 including the child by and through the child's guardian ad
18 litem or attorney.

19 E. Prior to the expiration of a judgment
20 transferring legal custody to an agency, the court may extend
21 the judgment for additional periods of one year if it finds
22 that the extension is necessary to safeguard the welfare of the
23 child or the public interest.

24 F. When a child reaches eighteen years of age, all
25 family in need of court-ordered services orders affecting the

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1 child then in force automatically terminate. The termination
2 of the orders shall not disqualify a child from eligibility for
3 transitional services."

4 Section 31. Section 32A-4-2 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 96, as amended) is amended to read:

6 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect
7 Act:

8 A. "abandonment" includes instances when the
9 parent, without justifiable cause:

10 (1) left the child without provision for the
11 child's identification for a period of fourteen days; or

12 (2) left the child with others, including the
13 other parent or an agency, without provision for support and
14 without communication for a period of:

15 (a) three months if the child was under
16 six years of age at the commencement of the three-month period;
17 or

18 (b) six months if the child was over six
19 years of age at the commencement of the six-month period;

20 B. "abused child" means a child:

21 (1) who has suffered or who is at risk of
22 suffering serious harm because of the action or inaction of the
23 child's parent, guardian or custodian;

24 (2) who has suffered physical abuse, emotional
25 abuse or psychological abuse inflicted or caused by the child's

1 parent, guardian or custodian;

2 (3) who has suffered sexual abuse or sexual
3 exploitation inflicted by the child's parent, guardian or
4 custodian;

5 (4) whose parent, guardian or custodian has
6 knowingly, intentionally or negligently placed the child in a
7 situation that may endanger the child's life or health; or

8 (5) whose parent, guardian or custodian has
9 knowingly or intentionally tortured, cruelly confined or
10 cruelly punished the child;

11 C. "aggravated circumstances" [~~include~~] includes
12 those circumstances in which the parent, guardian or custodian
13 has:

14 (1) attempted, conspired to cause or caused
15 great bodily harm to the child or great bodily harm or death to
16 the child's sibling;

17 (2) attempted, conspired to cause or caused
18 great bodily harm or death to another parent, guardian or
19 custodian of the child;

20 (3) attempted, conspired to subject or has
21 subjected the child to torture, chronic abuse or sexual abuse;
22 or

23 (4) had [~~his~~] parental rights over a sibling
24 of the child terminated involuntarily;

25 D. "great bodily harm" means an injury to a person

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1 that creates a high probability of death, that causes serious
2 disfigurement or that results in permanent or protracted loss
3 or impairment of the function of [~~any~~] a member or organ of the
4 body;

5 E. "neglected child" means a child:

6 (1) who has been abandoned by the child's
7 parent, guardian or custodian;

8 (2) who is without proper parental care and
9 control or subsistence, education, medical or other care or
10 control necessary for the child's well-being because of the
11 faults or habits of the child's parent, guardian or custodian
12 or the failure or refusal of the parent, guardian or custodian,
13 when able to do so, to provide them;

14 (3) who has been physically or sexually
15 abused, when the child's parent, guardian or custodian knew or
16 should have known of the abuse and failed to take reasonable
17 steps to protect the child from further harm;

18 (4) whose parent, guardian or custodian is
19 unable to discharge [~~his~~] that person's responsibilities to and
20 for the child because of incarceration, hospitalization or
21 physical or mental disorder or incapacity; or

22 (5) who has been placed for care or adoption
23 in violation of the law; provided that nothing in the
24 Children's Code shall be construed to imply that a child who is
25 being provided with treatment by spiritual means alone through

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1 prayer, in accordance with the tenets and practices of a
2 recognized church or religious denomination, by a duly
3 accredited practitioner thereof is for that reason alone a
4 neglected child within the meaning of the Children's Code; and
5 further provided that no child shall be denied the protection
6 afforded to all children under the Children's Code;

7 F. "physical abuse" includes but is not limited to
8 any case in which the child exhibits evidence of skin bruising,
9 bleeding, malnutrition, failure to thrive, burns, fracture of
10 any bone, subdural hematoma, soft tissue swelling or death and:

11 (1) there is not a justifiable explanation for
12 the condition or death;

13 (2) the explanation given for the condition is
14 at variance with the degree or nature of the condition;

15 (3) the explanation given for the death is at
16 variance with the nature of the death; or

17 (4) circumstances indicate that the condition
18 or death may not be the product of an accidental occurrence;

19 G. "sexual abuse" includes but is not limited to
20 criminal sexual contact, incest or criminal sexual penetration,
21 as those acts are defined by state law; ~~and~~

22 H. "sexual exploitation" includes but is not
23 limited to:

24 (1) allowing, permitting or encouraging a
25 child to engage in prostitution;

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1 (2) allowing, permitting, encouraging or
2 engaging a child in obscene or pornographic photographing; or

3 (3) filming or depicting a child for obscene
4 or pornographic commercial purposes, as those acts are defined
5 by state law; and

6 I. "transition plan" means an individualized
7 written plan for a child, based on the unique needs of the
8 child, that outlines all appropriate services to be provided to
9 the child to increase independent living skills. The plan
10 shall also include responsibilities of the child, and any other
11 party as appropriate, to enable the child to be self-sufficient
12 upon emancipation."

13 Section 32. Section 32A-4-5 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 99, as amended) is amended to read:

15 "32A-4-5. ADMISSIBILITY OF REPORT IN EVIDENCE--IMMUNITY
16 OF REPORTING PERSON--INVESTIGATION OF REPORT.--

17 A. In any proceeding alleging neglect or abuse
18 under the Children's Code resulting from a report required by
19 Section 32A-4-3 NMSA 1978 or in any proceeding in which that
20 report or any of its contents are sought to be introduced in
21 evidence, the report or its contents or any other facts related
22 thereto or to the condition of the child who is the subject of
23 the report shall not be excluded on the ground that the matter
24 is or may be the subject of a physician-patient privilege or
25 similar privilege or rule against disclosure.

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1 B. Anyone reporting an instance of alleged child
2 neglect or abuse or participating in a judicial proceeding
3 brought as a result of a report required by Section 32A-4-3
4 NMSA 1978 is presumed to be acting in good faith and shall be
5 immune from liability, civil or criminal, that might otherwise
6 be incurred or imposed by the law, unless the person acted in
7 bad faith or with malicious purpose.

8 C. After properly verifying the identity of the
9 public official, any school personnel or other person who has
10 the duty to report child abuse pursuant to Section 32A-4-3 NMSA
11 1978 shall permit a member of a law enforcement agency,
12 including tribal police officers, an employee of the district
13 attorney's office, an investigative interviewer for a program
14 described in Subsection E of this section or an employee of the
15 department, to interview a child with respect to a report
16 without the permission of the child's parent or guardian. Any
17 person permitting an interview pursuant to this subsection is
18 presumed to be acting in good faith and shall be immune from
19 liability, civil or criminal, that might otherwise be incurred
20 or imposed by law, unless the person acted in bad faith or with
21 malicious purpose.

22 D. An investigation may be conducted by law
23 enforcement, the district attorney's office, a program
24 described in Subsection E of this section and the department.
25 Interviews shall be conducted in a manner and place that

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1 protects the child and family from unnecessary trauma and
2 embarrassment. The investigating entity shall conduct the
3 investigation in a manner that will protect the privacy of the
4 child and the family, with the paramount consideration being
5 the safety of the child. All interactions with child victims
6 and child witnesses shall be conducted in a child-sensitive
7 manner, taking into consideration the special needs of the
8 child and the child's abilities, age and intellectual maturity.
9 The interviews shall be conducted in a place where the child
10 feels secure and in a language that the child uses and
11 understands.

12 E. If a community has a program for child abuse
13 investigation that includes an investigation interview of the
14 alleged victim or child witness, the investigation may be
15 conducted at a site designated by the community program. The
16 child abuse victim or child witness shall, when possible, be
17 interviewed in an environment where the alleged abuse
18 perpetrator will not be present.

19 F. Prior to interviewing a child, the department
20 shall notify the parent or guardian of the child who is being
21 interviewed, unless the department determines that notification
22 would adversely affect the safety of the child about whom the
23 report has been made or compromise the investigation."

24 Section 33. Section 32A-4-6 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 100, as amended) is amended to read:

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1 "32A-4-6. TAKING INTO CUSTODY--PENALTY.--

2 A. A child may be held or taken into custody:

3 (1) by a law enforcement officer when the
4 officer has evidence [~~reasonable grounds to believe that the~~
5 ~~child is suffering from illness or injury as a result of~~
6 ~~alleged abuse or neglect or has been abandoned or is in danger~~
7 ~~from the child's surroundings and removal from those~~
8 ~~surroundings is necessary; or~~ giving rise to a reasonable
9 suspicion to believe that the child is abused or neglected and
10 that there is an immediate threat to the child's safety;
11 provided that the law enforcement officer contacts the
12 department to enable the department to conduct an on-site
13 safety assessment to determine whether it is appropriate to
14 take the child into immediate custody, except that a child may
15 be taken into custody by a law enforcement officer without a
16 protective services assessment being conducted if:

17 (a) the child's parent, guardian or
18 custodian has attempted, conspired to cause or caused great
19 bodily harm to the child or great bodily harm or death to the
20 child's sibling;

21 (b) the child's parent, guardian or
22 custodian has attempted, conspired to cause or caused great
23 bodily harm or death to another parent, guardian or custodian
24 of the child;

25 (c) the child has been abandoned;

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1 (d) the child is in need of emergency
2 medical care;

3 (e) the department is not available to
4 conduct a safety assessment in a timely manner; or

5 (f) the child is in imminent risk of
6 abuse; or

7 (2) by medical personnel when there are
8 reasonable grounds to believe that the child has been injured
9 as a result of abuse or neglect and that the child may be at
10 risk of further injury if returned to the child's parent,
11 guardian or custodian. The medical personnel shall hold the
12 child until a law enforcement officer is available to take
13 custody of the child [~~or until a law enforcement officer has~~
14 ~~authorized release of the child to the department]~~ pursuant to
15 Paragraph (1) of Subsection A of this section.

16 B. When a child is taken into custody by law
17 enforcement, the department is not compelled to place the child
18 in an out-of-home placement and may release the child to the
19 child's parent, guardian or custodian.

20 [~~B.~~] C. When a child is taken into custody, the
21 department shall make reasonable efforts to determine whether
22 the child is an Indian child.

23 [~~C.~~] D. If a child taken into custody is an Indian
24 child and is alleged to be neglected or abused, the department
25 shall give notice to the agent of the Indian child's tribe in

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1 accordance with the federal Indian Child Welfare Act of 1978.

2 [D-] E. Any person who intentionally interferes
3 with protection of a child, as provided by Subsection A of this
4 section, is guilty of a petty misdemeanor."

5 Section 34. Section 32A-4-7 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 101, as amended) is amended to read:

7 "32A-4-7. RELEASE OR DELIVERY FROM CUSTODY.--

8 A. A person taking a child into custody shall, with
9 all reasonable speed:

10 (1) release the child to the child's parent,
11 guardian or custodian and issue verbal counsel or warning as
12 may be appropriate; or

13 (2) deliver the child to the department [~~or to~~
14 ~~an appropriate shelter-care facility~~] or, in the case of a
15 child who is believed to be suffering from a serious physical
16 or mental condition or illness that requires prompt treatment
17 or diagnosis, deliver the child to a medical facility. If a
18 law enforcement officer delivers a child to [~~a shelter-care~~
19 ~~facility or~~] a medical facility, the officer shall immediately
20 notify the department that the child has been placed in the
21 department's legal custody.

22 B. When an alleged neglected or abused child is
23 delivered to the department, a department caseworker shall
24 review the need for placing the child in custody and shall
25 release the child from custody unless custody is appropriate or

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1 has been ordered by the court. When a child is delivered to
2 [~~an appropriate shelter care facility or~~] a medical facility, a
3 department caseworker shall review the need for retention of
4 custody within a reasonable time after delivery of the child to
5 the facility and shall release the child from custody unless
6 custody is appropriate or has been ordered by the court.

7 C. If a child is placed in the legal custody of the
8 department and is not released to the child's parent, guardian
9 or custodian, the department shall give written notice thereof
10 as soon as possible, and in no case later than twenty-four
11 hours, to the child's parent, guardian or custodian together
12 with a statement of the reason for taking the child into
13 custody.

14 D. Reasonable efforts shall be made to prevent or
15 eliminate the need for removing the child from the child's
16 home, with the paramount concern being the child's health and
17 safety. In all cases when a child is taken into custody, the
18 child shall be released to the child's parent, guardian or
19 custodian, unless the department files a petition within two
20 days from the date that the child was taken into custody.

21 E. The department may release the child at any time
22 within the two-day period after the child was taken into
23 custody if it is determined by the department that release is
24 appropriate or if release has been ordered by the court."

25 Section 35. Section 32A-4-14 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 108, as amended) is amended to read:

2 "32A-4-14. CHANGE IN PLACEMENT.--

3 A. When the child's placement is changed, including
4 a return to the child's home, written notice shall be sent to
5 the child's guardian ad litem or attorney, all parties, the
6 child's CASA, the child's foster parents and the court ten days
7 prior to the placement change, unless an emergency situation
8 requires moving the child prior to sending notice.

9 B. When the child, by and through the child's
10 guardian ad litem or attorney, files a motion and requests a
11 court hearing to contest the proposed change, the department
12 shall not change the child's placement pending the results of
13 the court hearing, unless an emergency requires changing the
14 child's placement prior to the hearing.

15 C. When a child's placement is changed without
16 prior notice as provided for in Subsection A of this section,
17 written notice shall be sent to the child's guardian ad litem
18 or attorney, all parties, the child's CASA, the child's foster
19 parents and the court within three days after the placement
20 change.

21 D. Written notice is not required for removal of a
22 child from temporary emergency care, emergency foster care or
23 respite care. The department shall provide oral notification
24 of the removal to the child's guardian ad litem or attorney.

25 E. Notice need not be given to the parties, other

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1 than the child, or to the court when placement is changed at
2 the request of the child's foster parents or substitute care
3 provider. Notice shall be given to the child's guardian ad
4 litem or attorney."

5 Section 36. Section 32A-4-18 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 112, as amended) is amended to read:

7 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
8 PROBABLE CAUSE.--

9 A. When a child alleged to be neglected or abused
10 has been placed in the legal custody of the department or the
11 department has petitioned the court for temporary custody, a
12 custody hearing shall be held within ten days from the date the
13 petition is filed to determine if the child should remain in or
14 be placed in the department's custody pending adjudication.
15 Upon written request of the respondent, the hearing may be held
16 earlier, but in no event shall the hearing be held sooner than
17 two days after the date the petition was filed.

18 B. The parent, guardian or custodian of the child
19 alleged to be abused or neglected shall be given reasonable
20 notice of the time and place of the custody hearing.

21 C. At the custody hearing, the court shall return
22 legal custody of the child to ~~[his]~~ the child's parent,
23 guardian or custodian unless probable cause exists to believe
24 that:

25 (1) the child is suffering from an illness or

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1 injury, and the parent, guardian or custodian is not providing
2 adequate care for the child;

3 (2) the child is in immediate danger from
4 [~~his~~] the child's surroundings, and removal from those
5 surroundings is necessary for the child's safety or well-being;

6 (3) the child will be subject to injury by
7 others if not placed in the custody of the department;

8 (4) there has been an abandonment of the child
9 by [~~his~~] the child's parent, guardian or custodian; or

10 (5) the parent, guardian or custodian is not
11 able or willing to provide adequate supervision and care for
12 the child.

13 D. At the conclusion of the custody hearing, if the
14 court determines that probable cause exists pursuant to
15 Subsection C of this section, the court may:

16 (1) return legal custody of the child to [~~his~~]
17 the child's parent, guardian or custodian upon such conditions
18 as will reasonably ensure the safety and well-being of the
19 child, including protective supervision by the department; or

20 (2) award legal custody of the child to the
21 department.

22 E. Reasonable efforts shall be made to preserve and
23 reunify the family, with the paramount concern being the
24 child's health and safety.

25 F. At the conclusion of the custody hearing, if the

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1 court determines that probable cause does not exist pursuant to
2 Subsection C of this section, the court shall:

3 (1) retain jurisdiction and, unless the court
4 permits otherwise, order that the respondent and child remain
5 in the jurisdiction of the court pending the adjudication;

6 (2) return legal custody of the child to the
7 child's parent, guardian or custodian with conditions to
8 provide for the safety and well-being of the child; and

9 (3) order that the child's parent, guardian or
10 custodian allow the child necessary contact with the child's
11 guardian ad litem or attorney.

12 ~~[E.]~~ G. At the conclusion of the custody hearing,
13 the court may order the respondent or the child alleged to be
14 neglected or abused, or both, to undergo appropriate diagnostic
15 examinations or evaluations. If the court determines that
16 probable cause does not exist, the court may order the
17 respondent or the child alleged to be neglected or abused, or
18 both, to undergo appropriate diagnostic examinations or
19 evaluations as necessary to protect the child's best interests,
20 based upon the allegations in the petition and the evidence
21 presented at the custody hearing. Copies of any diagnostic or
22 evaluation reports ordered by the court shall be provided to
23 the parties at least five days before the adjudicatory hearing
24 is scheduled. The reports shall not be sent to the court.

25 ~~[F.]~~ H. The Rules of Evidence shall not apply to

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1 custody hearings.

2 I. Nothing in this section shall be construed to
3 abridge the rights of Indian children pursuant to the federal
4 Indian Child Welfare Act of 1978."

5 Section 37. Section 32A-4-19 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 113, as amended) is amended to read:

7 "32A-4-19. ADJUDICATORY HEARINGS--TIME LIMITATIONS.--

8 A. The adjudicatory hearing in a neglect or abuse
9 proceeding shall be commenced and a prima facie case presented
10 within sixty days after the [~~latest of the following dates:~~

11 ~~(1) the date that the petition is served on~~
12 ~~the respondent;~~

13 ~~(2) if the trial court orders a mistrial or a~~
14 ~~new trial, the date that the order is filed; or~~

15 ~~(3) in the event of an appeal, the date that~~
16 ~~the mandate or order is filed in the district court disposing~~
17 ~~of the appeal] date of service on the respondent.~~

18 B. Prior to the adjudicatory hearing, all parties
19 to the hearing shall attend a mandatory meeting and attempt to
20 settle issues attendant to the adjudicatory hearing and develop
21 a proposed treatment plan that serves the child's best
22 interest.

23 C. The children's court attorney shall represent
24 the state at the adjudicatory hearing.

25 D. When the adjudicatory hearing on any petition is

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1 not ~~[begin]~~ commenced or a prima facie case has not been
2 presented within the time period specified in Subsection A of
3 this section or within the period of any extension granted, the
4 petition shall be dismissed with prejudice."

5 Section 38. Section 32A-4-20 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 114, as amended) is amended to read:

7 "32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
8 DISPOSITIONAL MATTERS--PENALTY.--

9 A. The proceedings shall be recorded by
10 stenographic notes or by electronic, mechanical or other
11 appropriate means.

12 B. All abuse and neglect hearings shall be closed
13 to the general public.

14 C. Only the parties, their counsel, witnesses and
15 other persons approved by the court may be present at a closed
16 hearing. The foster parent, preadoptive parent or relative
17 providing care for the child shall be given notice and an
18 opportunity to be heard at the dispositional phase. Those
19 other persons the court finds to have a proper interest in the
20 case or in the work of the court may be admitted by the court
21 to closed hearings on the condition that they refrain from
22 divulging any information that would identify the child or
23 family involved in the proceedings.

24 D. Accredited representatives of the news media
25 shall be allowed to be present at closed hearings, subject to

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1 the condition that they refrain from divulging information that
2 would identify any child involved in the proceedings or the
3 parent, guardian or custodian of that child and subject to
4 enabling regulations as the court finds necessary for the
5 maintenance of order and decorum and for the furtherance of the
6 purposes of the Children's Code. A child who is the subject of
7 an abuse and neglect proceeding and is present at a hearing may
8 object to the presence of the media. The court may exclude the
9 media if it finds that the presence of the media is contrary to
10 the best interests of the child.

11 E. If the court finds that it is in the best
12 interest of a child under fourteen years of age, the child may
13 be excluded from a hearing under the Abuse and Neglect Act. A
14 child fourteen years of age or older may be excluded from a
15 hearing only if the court makes a finding that there is a
16 compelling reason to exclude the child and states the factual
17 basis for the finding.

18 F. Those persons or parties granted admission to a
19 closed hearing who intentionally divulge information in
20 violation of this section are guilty of a petty misdemeanor.

21 G. The court shall determine if the allegations of
22 the petition are admitted or denied. If the allegations are
23 denied, the court shall proceed to hear evidence on the
24 petition. The court, after hearing all of the evidence bearing
25 on the allegations of neglect or abuse, shall make and record

1 its findings on whether the child is a neglected child, an
2 abused child or both. If the petition alleges that the parent,
3 guardian or custodian has subjected the child to aggravated
4 circumstances, then the court shall also make and record its
5 findings on whether the aggravated circumstances have been
6 proven.

7 H. If the court finds on the basis of a valid
8 admission of the allegations of the petition or on the basis of
9 clear and convincing evidence, competent, material and relevant
10 in nature, that the child is neglected or abused, the court may
11 proceed immediately or at a postponed hearing to make
12 disposition of the case. If the court does not find that the
13 child is neglected or abused, the court shall dismiss the
14 petition and may refer the family to the department for
15 appropriate services.

16 I. In that part of the hearings held under the
17 Children's Code on dispositional issues, all relevant and
18 material evidence helpful in determining the questions
19 presented, including oral and written reports, may be received
20 by the court and may be relied upon to the extent of its
21 probative value even though not competent had it been offered
22 during the part of the hearings on adjudicatory issues.

23 J. On the court's motion or that of a party, the
24 court may continue the hearing on the petition for a period not
25 to exceed thirty days to receive reports and other evidence in

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1 connection with disposition. The court shall continue the
2 hearing pending the receipt of the predisposition study and
3 report if that document has not been prepared and received.
4 During any continuances under this subsection, the court shall
5 make an appropriate order for legal custody."

6 Section 39. Section 32A-4-21 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 115, as amended) is amended to read:

8 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,
9 REPORTS AND EXAMINATIONS.--

10 A. Prior to holding a dispositional hearing, the
11 court shall direct that a predisposition study and report be
12 submitted in writing to the court by the department.

13 B. The predisposition study required pursuant to
14 Subsection A of this section shall contain the following
15 information:

16 (1) a statement of the specific reasons for
17 intervention by the department or for placing the child in the
18 department's custody and a statement of the parent's ability to
19 care for the child in the parent's home without causing harm to
20 the child;

21 (2) a statement of how an intervention plan is
22 designed to achieve placement of the child in the least
23 restrictive setting available, consistent with the best
24 interests and special needs of the child, including a statement
25 of the likely harm the child may suffer as a result of being

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1 removed from the parent's home, including emotional harm that
2 may result due to separation from the child's parents, and a
3 statement of how the intervention plan is designed to place the
4 child in close proximity to the parent's home without causing
5 harm to the child due to separation from [~~his~~] parents,
6 siblings or any other person who may significantly affect the
7 child's best interest;

8 (3) the wishes of the child as to [~~his~~] the
9 child's custodian;

10 (4) whether the child has a family member who,
11 subsequent to study by the department, is determined to be
12 qualified to care for the child;

13 (5) a description of services offered to the
14 child, [~~his~~] the child's family and [~~his~~] the child's foster
15 care family and a summary of reasonable efforts made to prevent
16 removal of the child from [~~his~~] the child's family or
17 reasonable efforts made to reunite the child with [~~his~~] the
18 child's family;

19 (6) a description of the home or facility in
20 which the child is placed and the appropriateness of the
21 child's placement;

22 (7) the results of any diagnostic examination
23 or evaluation ordered at the custody hearing;

24 (8) a statement of the child's medical and
25 educational background;

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1 (9) if the child is an Indian child, whether
2 the placement preferences set forth in the federal Indian Child
3 Welfare Act of 1978 or the placement preferences of the child's
4 Indian tribe were followed and whether the child's treatment
5 plan provides for maintaining the child's cultural ties;

6 (10) a treatment plan that sets forth steps to
7 ensure that the child's physical, medical, psychological and
8 educational needs are met and that sets forth services to be
9 provided to the child and ~~his~~ the child's parents to
10 facilitate permanent placement of the child in the parent's
11 home; ~~and~~

12 (11) for children sixteen years of age and
13 older, a plan for developing the specific skills the child
14 requires for successful transition into independent living as
15 an adult, regardless of whether the child is returned to ~~his~~
16 the child's parent's home; and

17 (12) a treatment plan that sets forth steps to
18 ensure that the child's educational needs are met and, for a
19 child fourteen years of age or older, a treatment plan that
20 specifically sets forth the child's educational and post-
21 secondary goals; and

22 (13) a description of the child's foster care
23 placement and whether it is appropriate in terms of the
24 educational setting and proximity to the school the child was
25 enrolled in at the time of the placement, including plans for

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1 travel for the child to remain in the school in which the child
2 was enrolled at the time of placement, if reasonable and in the
3 child's best interest.

4 C. A copy of the predisposition report shall be
5 provided by the department to counsel for all parties five days
6 before the dispositional hearing.

7 D. If the child is an adjudicated abused child, any
8 temporary custody orders shall remain in effect until the court
9 has received and considered the predispositional study at the
10 dispositional hearing."

11 Section 40. Section 32A-4-22 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 116, as amended) is amended to read:

13 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED
14 CHILD.--

15 A. If not held in conjunction with the adjudicatory
16 hearing, the dispositional hearing shall be commenced within
17 thirty days after the conclusion of the adjudicatory hearing.
18 At the conclusion of the dispositional hearing, the court shall
19 make and include in the dispositional judgment its findings on
20 the following:

21 (1) the interaction and interrelationship of
22 the child with [~~his~~] the child's parent, siblings and any other
23 person who may significantly affect the child's best interest;

24 (2) the child's adjustment to [~~his~~] the
25 child's home, school and community;

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1 (3) the mental and physical health of all
2 individuals involved;

3 (4) the wishes of the child as to the child's
4 placement;

5 (5) the wishes of the child's parent, guardian
6 or custodian as to the child's custody;

7 (6) whether there exists a relative of the
8 child or other individual who, after study by the department,
9 is found to be qualified to receive and care for the child;

10 (7) the availability of services recommended
11 in the treatment plan prepared as a part of the predisposition
12 study in accordance with the provisions of Section 32A-4-21
13 NMSA 1978;

14 (8) the ability of the parent to care for the
15 child in the home so that no harm will result to the child;

16 (9) whether reasonable efforts were used by
17 the department to prevent removal of the child from the home
18 prior to placement in substitute care and whether reasonable
19 efforts were used to attempt reunification of the child with
20 the natural parent; ~~and~~

21 (10) whether reasonable efforts were made by
22 the department to place siblings in custody together, unless
23 such joint placement would be contrary to the safety or well-
24 being of any of the siblings in custody, and whether any
25 siblings not jointly placed have been provided reasonable

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1 visitation or other ongoing interaction, unless visitation or
2 other ongoing interaction would be contrary to the safety or
3 well-being of any of the siblings; and

4 [~~(10)~~] (11) if the child is an Indian child,
5 whether the placement preferences set forth in the federal
6 Indian Child Welfare Act of 1978 or the placement preferences
7 of the child's Indian tribe have been followed and whether the
8 Indian child's treatment plan provides for maintaining the
9 Indian child's cultural ties. When placement preferences have
10 not been followed, good cause for noncompliance shall be
11 clearly stated and supported.

12 B. If a child is found to be neglected or abused,
13 the court may enter its judgment making any of the following
14 dispositions to protect the welfare of the child:

15 (1) permit the child to remain with [~~his~~] the
16 child's parent, guardian or custodian, subject to those
17 conditions and limitations the court may prescribe;

18 (2) place the child under protective
19 supervision of the department; or

20 (3) transfer legal custody of the child to any
21 of the following:

22 (a) the noncustodial parent, if it is
23 found to be in the child's best interest;

24 (b) an agency responsible for the care
25 of neglected or abused children; or

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1 (c) a child-placement agency willing and
2 able to assume responsibility for the education, care and
3 maintenance of the child and licensed or otherwise authorized
4 by law to receive and provide care for the child.

5 C. If a child is found to be neglected or abused,
6 in its dispositional judgment the court shall also order the
7 department to implement and the child's parent, guardian or
8 custodian to cooperate with any treatment plan approved by the
9 court. Reasonable efforts shall be made to preserve and
10 reunify the family, with the paramount concern being the
11 child's health and safety. The court may determine that
12 reasonable efforts are not required to be made when the court
13 finds that:

14 (1) the efforts would be futile; or

15 (2) the parent, guardian or custodian has
16 subjected the child to aggravated circumstances.

17 D. Any parent, guardian or custodian of a child who
18 is placed in the legal custody of the department or other
19 person pursuant to Subsection B of this section shall have
20 reasonable rights of visitation with the child as determined by
21 the court, unless the court finds that the best interests of
22 the child preclude any visitation.

23 E. The court may order reasonable visitation
24 between a child placed in the custody of the department and the
25 child's siblings or any other person who may significantly

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1 affect the child's best interest, if the court finds the
2 visitation to be in the child's best interest.

3 F. Unless a child found to be neglected or abused
4 is also found to be delinquent, the child shall not be confined
5 in an institution established for the long-term care and
6 rehabilitation of delinquent children.

7 G. When the court vests legal custody in an agency,
8 institution or department, the court shall transmit with the
9 dispositional judgment copies of the clinical reports, the
10 predisposition study and report and any other information it
11 has pertinent to the care and treatment of the child.

12 H. Prior to a child being placed in the custody or
13 protective supervision of the department, the department shall
14 be provided with reasonable oral or written notification and an
15 opportunity to be heard. At any hearing held pursuant to this
16 subsection, the department may appear as a party.

17 I. When a child is placed in the custody of the
18 department, the department shall investigate whether the child
19 is eligible for enrollment as a member of an Indian tribe and,
20 if so, the department shall pursue the enrollment on the
21 child's behalf.

22 J. When the court determines pursuant to Subsection
23 C of this section that no reasonable efforts at reunification
24 are required, the court shall conduct, within thirty days, a
25 permanency hearing as described in Section 32A-4-25.1 NMSA

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1 1978. Reasonable efforts shall be made to implement and
2 finalize the permanency plan in a timely manner."

3 Section 41. A new Section 32A-4-23.1 NMSA 1978 is enacted
4 to read:

5 "32A-4-23.1. [NEW MATERIAL] DISPOSITION OF AN
6 UNDOCUMENTED IMMIGRANT CHILD IN A PROCEEDING UNDER THE ABUSE
7 AND NEGLECT ACT.--

8 A. Whenever the court adjudicates that a child is
9 abused or neglected, the department shall determine the child's
10 immigration status. At the first judicial review, the
11 department shall report the child's immigration status to the
12 court. Services to children alleged to have been abused,
13 neglected or abandoned must be provided without regard to the
14 immigration status of the child except where immigration status
15 is explicitly set forth as a statutory or regulatory condition
16 of coverage or eligibility.

17 B. If the child is an undocumented immigrant, the
18 department shall include in the treatment plan a recommendation
19 as to whether the permanency plan for the child includes
20 reuniting the child with the child's parents and whether it is
21 in the child's best interest to be returned to the child's
22 country of origin. If the permanency plan does not include
23 reunification and the department does not recommend that the
24 child be returned to the country of origin, the department
25 shall determine whether the child may be eligible for special

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1 immigrant juvenile status under federal law.

2 C. If the child is eligible for special immigrant
3 juvenile status, the department shall move the court for a
4 special immigrant juvenile status order containing the
5 necessary findings to establish that the child meets the
6 criteria for federal special immigrant juvenile status. The
7 department's motion shall include a statement of the express
8 wishes of the child, as expressed by the child or the child's
9 guardian ad litem or attorney.

10 D. After consultation with the child and the
11 child's guardian ad litem or attorney, the department shall
12 determine whether the child's best interests would be served by
13 the filing of a petition for special immigrant juvenile status
14 and application for adjustment of status and if in the child's
15 best interest, within sixty days after an entry of the special
16 immigrant juvenile status order, the department shall file a
17 petition for special immigrant juvenile status and an
18 application for adjustment of status on behalf of the child.

19 E. If a petition and application have been filed
20 and the petition and application have not been granted by the
21 time the child reaches eighteen years of age, the court may
22 retain jurisdiction over the case for the sole purpose of
23 ensuring that the child continues to satisfy the requirements
24 for classification as a special immigrant juvenile.

25 F. Review hearings for the child shall be set

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1 solely for the purpose of confirming that the child continues
2 to satisfy such requirements and determining the status of the
3 petition and application.

4 G. The court's jurisdiction terminates upon the
5 final decision of the federal authorities.

6 H. Retention of jurisdiction in this instance does
7 not affect the transition services available to the child.

8 I. The court may not retain jurisdiction of the
9 case after the immigrant child's twenty-first birthday.

10 J. In a judicial review report provided to the
11 court for a child for whom the court has granted the special
12 immigrant juvenile status order described in Subsection C of
13 this section, the court shall be advised of the status of the
14 petition and application process concerning the child."

15 Section 42. Section 32A-4-24 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 118) is amended to read:

17 "32A-4-24. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
18 MODIFICATION, TERMINATION OR EXTENSION OF COURT ORDERS.--

19 A. A judgment vesting legal custody of a child in
20 an agency shall remain in force for an indeterminate period not
21 exceeding two years from the date entered.

22 B. A judgment vesting legal custody of a child in
23 an individual, other than the child's parent or permanent
24 guardian, shall remain in force for two years from the date
25 entered, unless sooner terminated by court order.

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1 C. A judgment vesting legal custody of a child in
2 the child's parent or a permanent guardian shall remain in
3 force for an indeterminate period from the date entered until
4 terminated by court order or until the child is emancipated or
5 reaches the age of majority.

6 D. At any time prior to expiration, a judgment
7 vesting legal custody or granting protective supervision may be
8 modified, revoked or extended on motion by [a] any party, [or]
9 including the child by and through the child's guardian ad
10 litem.

11 E. Prior to the expiration of a judgment
12 transferring legal custody to an agency, the court may extend
13 the judgment for additional periods of one year if it finds
14 that the extension is necessary to safeguard the welfare of the
15 child or the public interest.

16 F. When a child reaches eighteen years of age, all
17 neglect and abuse orders affecting the child then in force
18 automatically terminate except as provided in Section
19 32A-4-23.1 NMSA 1978 and Subsection D of Section 32A-4-25.3
20 NMSA 1978. The termination of the orders shall not disqualify
21 a child from eligibility for transitional services."

22 Section 43. Section 32A-4-25 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 119, as amended) is amended to read:

24 "32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS.--

25 A. The initial judicial review shall be held within
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1 sixty days of the disposition. At the initial review, the
2 parties shall demonstrate to the court efforts made to
3 implement the treatment plan approved by the court in its
4 dispositional order. The court shall determine the extent to
5 which the treatment plan has been implemented and make
6 supplemental orders as necessary to ensure compliance with the
7 treatment plan and the safety of the child. Prior to the
8 initial judicial review, the department shall submit a copy of
9 the adjudicatory order, the dispositional order and notice of
10 the initial judicial review to the local substitute care review
11 board for that judicial district created under the Citizen
12 Substitute Care Review Act. A representative of the local
13 substitute care review board shall be permitted to attend and
14 comment to the court.

15 B. Subsequent periodic reviews of dispositional
16 orders shall be held within six months of the conclusion of the
17 permanency hearing or, if a motion has been filed for
18 termination of parental rights or permanent guardianship,
19 within six months of the decision on that motion and every six
20 months thereafter. Prior to the review, the department shall
21 submit a progress report to the local substitute care review
22 board for that judicial district created under the Citizen
23 Substitute Care Review Act. Prior to any judicial review by
24 the court pursuant to this section, the local substitute care
25 review board may review the dispositional order or the

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1 continuation of the order and the department's progress report
2 and report its findings and recommendations to the court. The
3 review may be carried out by either of the following:

4 (1) a judicial review hearing conducted by the
5 court; or

6 (2) a judicial review hearing conducted by a
7 special master appointed by the court; provided, however, that
8 the court approve any findings made by the special master.

9 C. The children's court attorney shall give notice
10 to all parties, including the child by and through the child's
11 guardian ad litem or attorney, the child's CASA, a contractor
12 administering the local substitute care review board and the
13 child's foster parent or substitute care provider of the time,
14 place and purpose of any judicial review hearing held pursuant
15 to Subsection A or B of this section.

16 D. At any judicial review hearing held pursuant to
17 Subsection B of this section, the department, the child's
18 guardian ad litem or attorney and all parties given notice
19 pursuant to Subsection C of this section shall have the
20 opportunity to present evidence and to cross-examine witnesses.
21 At the hearing, the department shall show that it has made
22 reasonable effort to implement any treatment plan approved by
23 the court in its dispositional order and shall present a
24 treatment plan consistent with the purposes of the Children's
25 Code for any period of extension of the dispositional order.

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1 The respondent shall demonstrate to the court that efforts to
2 comply with the treatment plan approved by the court in its
3 dispositional order and efforts to maintain contact with the
4 child were diligent and made in good faith. The court shall
5 determine the extent of compliance with the treatment plan and
6 whether progress is being made toward establishing a stable and
7 permanent placement for the child.

8 E. The Rules of Evidence shall not apply to
9 hearings held pursuant to this section. The court may admit
10 testimony by any person given notice of the hearing who has
11 information about the status of the child or the status of the
12 treatment plan.

13 F. At the conclusion of any hearing held pursuant
14 to this section, the court shall make findings of fact and
15 conclusions of law.

16 G. When the child is an Indian child, the court
17 shall determine during review of a dispositional order whether
18 the placement preferences set forth in the federal Indian Child
19 Welfare Act of 1978 or the placement preferences of the child's
20 Indian tribe were followed and whether the child's treatment
21 plan provides for maintaining the child's cultural ties. When
22 placement preferences have not been followed, good cause for
23 noncompliance shall be clearly stated and supported.

24 H. Based on its findings at a judicial review
25 hearing held pursuant to Subsection B of this section, the

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1 court shall order one of the following dispositions:

2 (1) dismiss the action and return the child to
3 [~~his~~] the child's parent without supervision if the court finds
4 that conditions in the home that led to abuse have been
5 corrected and it is now safe for the return of the abused
6 child;

7 (2) permit the child to remain with [~~his~~] the
8 child's parent, guardian or custodian subject to those
9 conditions and limitations the court may prescribe, including
10 protective supervision of the child by the department;

11 (3) return the child to [~~his~~] the child's
12 parent and place the child under the protective supervision of
13 the department;

14 (4) transfer or continue legal custody of the
15 child to:

16 (a) the noncustodial parent, if that is
17 found to be in the child's best interests;

18 (b) a relative or other individual who,
19 after study by the department or other agency designated by the
20 court, is found by the court to be qualified to receive and
21 care for the child and is appointed as a permanent guardian of
22 the child; or

23 (c) the department, subject to the
24 provisions of Paragraph (6) of this subsection;

25 (5) continue the child in the legal custody of

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1 the department with or without any required parental
2 involvement in a treatment plan. Reasonable efforts shall be
3 made to preserve and reunify the family, with the paramount
4 concern being the child's health and safety unless the court
5 finds that such efforts are not required. The court may
6 determine that reasonable efforts are not required to be made
7 when the court finds that:

8 (a) the efforts would be futile; or
9 (b) the parent, guardian or custodian
10 has subjected the child to aggravated circumstances;

11 (6) make additional orders regarding the
12 treatment plan or placement of the child to protect the child's
13 best interests if the court determines the department has
14 failed in implementing any material provision of the treatment
15 plan or abused its discretion in the placement or proposed
16 placement of the child; or

17 (7) if during a judicial review the court
18 finds that the child's parent, guardian or custodian has not
19 complied with the court-ordered treatment plan, the court may
20 order:

21 (a) the child's parent, guardian or
22 custodian to show cause why ~~[he]~~ the parent, guardian or
23 custodian should not be held in contempt of court; or

24 (b) a hearing on the merits of
25 terminating parental rights.

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1 I. Dispositional orders entered pursuant to this
2 section shall remain in force for a period of six months,
3 except for orders that provide for transfer of the child to the
4 child's noncustodial parent or to a permanent guardian.

5 J. The report of the local substitute care review
6 board submitted to the court pursuant to Subsection B of this
7 section shall become a part of the child's permanent court
8 record.

9 K. When the court determines, pursuant to Paragraph
10 (5) of Subsection H of this section, that no reasonable efforts
11 at reunification are required, the court shall conduct, within
12 thirty days, a permanency hearing as described in Section
13 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to
14 place the child in a timely manner in accordance with the
15 permanency plan and to complete whatever steps are necessary to
16 finalize the permanent placement of the child."

17 Section 44. Section 32A-4-25.1 NMSA 1978 (being Laws
18 1997, Chapter 34, Section 8, as amended) is amended to read:

19 "32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW
20 HEARINGS.--

21 A. A permanency hearing shall be commenced within
22 six months of the initial judicial review of a child's
23 dispositional order or within twelve months of a child entering
24 foster care pursuant to Subsection E of this section, whichever
25 occurs first. Prior to the initial permanency hearing, all

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1 parties to the hearing shall attend a mandatory meeting and
2 attempt to settle issues attendant to the permanency hearing
3 and develop a proposed treatment plan that serves the child's
4 best interest. Prior to the initial permanency hearing, the
5 department shall submit a progress report regarding the child
6 to the local substitute care review board for that judicial
7 district. The local substitute care review board may review
8 the child's dispositional order, any continuation of that order
9 and the department's progress report and report its findings
10 and recommendations to the court.

11 B. At the permanency hearing, all parties shall
12 have the opportunity to present evidence and to cross-examine
13 witnesses. At the conclusion of the permanency hearing, the
14 court shall order one of the following permanency plans for the
15 child:

16 (1) reunification;

17 (2) placement for adoption after the parents'
18 rights have been relinquished or terminated or after a motion
19 has been filed to terminate parental rights;

20 (3) placement with a person who will be the
21 child's permanent guardian;

22 (4) placement in the legal custody of the
23 department with the child placed in the home of a fit and
24 willing relative; or

25 (5) placement in the legal custody of the

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1 department under a planned permanent living arrangement,
2 provided that there is substantial evidence that none of the
3 above plans is appropriate for the child.

4 C. If the court adopts a permanency plan of
5 reunification, the court shall adopt a plan for transitioning
6 the child home and schedule a permanency review hearing within
7 three months. If the child is reunified, the subsequent
8 hearing may be vacated.

9 D. At the permanency review hearing, all parties
10 and the child's guardian ad litem or attorney shall have the
11 opportunity to present evidence and cross-examine witnesses.
12 Based on the evidence, the court shall:

13 (1) change the plan from reunification to one
14 of the alternative plans provided in Subsection B of this
15 section;

16 (2) dismiss the case and return custody of the
17 child to ~~[his]~~ the child's parent, guardian or custodian; or

18 (3) return the child to the custody of ~~[his]~~
19 the child's parent, guardian or custodian, subject to any
20 conditions or limitations as the court may prescribe, including
21 protective supervision of the child by the department and
22 continuation of the treatment plan for not more than six
23 months, after which the case shall be dismissed. The
24 department may seek removal of a child from the home by
25 obtaining an order in the pending case or by seeking emergency

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1 removal under Section 32A-4-6 NMSA 1978 during the period of
2 protective supervision if the child's best interest requires
3 such action. When a child is removed in this situation, a
4 permanency hearing shall be scheduled within thirty days of the
5 child coming back into the department's legal custody.

6 E. The court shall hold a permanency hearing and
7 adopt a permanency plan for a child within twelve months of the
8 child entering foster care. For purposes of this section, a
9 child shall be considered to have entered foster care on the
10 earlier of:

11 (1) the date of the first judicial finding
12 that the child has been abused or neglected; or

13 (2) sixty days after the date on which the
14 child was removed from the home.

15 F. The court shall hold permanency hearings every
16 twelve months when a child is in the legal custody of the
17 department.

18 G. The children's court attorney shall give notice
19 to all parties, including the child by and through the child's
20 guardian ad litem or attorney, the child's CASA, a contractor
21 administering the local substitute care review board and the
22 child's foster parent or substitute care provider of the time,
23 place and purpose of any permanency hearing or permanency
24 review hearing held pursuant to this section.

25 H. The rules of evidence shall not apply to

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1 permanency hearings. The court may admit testimony by any
2 person given notice of the permanency hearing who has
3 information about the status of the child or the status of the
4 treatment plan. All testimony shall be subject to
5 cross-examination."

6 Section 45. A new Section 32A-4-25.2 NMSA 1978 is enacted
7 to read:

8 "32A-4-25.2. [NEW MATERIAL] TRANSITION SERVICES.--

9 A. Prior to a child's reaching seventeen years of
10 age, the department shall meet with the child, the child's
11 guardian ad litem or attorney and others of the child's
12 choosing to develop a transition plan. The department shall
13 assist the child in identifying and planning to meet the
14 child's needs after the child's eighteenth birthday, including
15 housing, education, employment or income, health and mental
16 health, local opportunities for mentors and continuing support
17 services.

18 B. The department shall present the child's
19 proposed transition plan to the court at the first hearing
20 scheduled after the child's seventeenth birthday.

21 C. The court shall order a transition plan for the
22 child. The transition plan approved by the court shall be
23 reviewed at every subsequent review and permanency hearing."

24 Section 46. A new Section 32A-4-25.3 NMSA 1978 is enacted
25 to read:

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1 "32A-4-25.3. [NEW MATERIAL] DISCHARGE HEARING.--

2 A. At the last review or permanency hearing held
3 prior to the child's eighteenth birthday, the court shall
4 review the transition plan and shall determine whether the
5 department has made reasonable efforts to implement the
6 requirements of Subsection B of this section.

7 B. The court shall determine:

8 (1) whether written information concerning the
9 child's family history, the whereabouts of any sibling if
10 appropriate and education and health records have been provided
11 to the child;

12 (2) whether the child's social security card,
13 certified birth certificate, state-issued identification card,
14 death certificate of a parent and proof of citizenship or
15 residence have been provided to the child;

16 (3) whether assistance in obtaining medicaid
17 has been provided to the child, unless the child is ineligible
18 for medicaid; and

19 (4) whether referral for a guardianship or
20 limited guardianship if the child is incapacitated has been
21 made.

22 C. If the court finds that the department has not
23 made reasonable efforts to meet all the requirements of
24 Subsection B of this section and that termination of
25 jurisdiction would be harmful to the young adult, the court may

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1 continue to exercise its jurisdiction for a period not to
2 exceed one year from the child's eighteenth birthday. The
3 young adult must consent to continued jurisdiction of the
4 court. The court may dismiss the case at any time after the
5 child's eighteenth birthday for good cause."

6 Section 47. Section 32A-4-29 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 123, as amended) is amended to read:

8 "32A-4-29. TERMINATION PROCEDURE.--

9 A. A motion to terminate parental rights may be
10 filed at any stage of the abuse or neglect proceeding by a
11 party to the proceeding. The motion may be filed regardless of
12 a court-ordered permanency plan.

13 B. The motion for termination of parental rights
14 shall set forth:

15 (1) the date, place of birth and marital
16 status of the child, if known;

17 (2) the grounds for termination and the facts
18 and circumstances supporting the grounds for termination;

19 (3) the names and addresses of the persons or
20 authorized agency or agency officer to whom legal custody might
21 be transferred;

22 (4) whether the child resides or has resided
23 with a foster parent who desires to adopt this child;

24 (5) whether the motion is in contemplation of
25 adoption;

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1 (6) the relationship or legitimate interest of
2 the moving party to the child; and

3 (7) whether the child is subject to the
4 federal Indian Child Welfare Act of 1978 and, if so:

5 (a) the tribal affiliations of the
6 child's parents;

7 (b) the specific actions taken by the
8 moving party to notify the parents' tribes and the results of
9 the contacts, including the names, addresses, titles and
10 telephone numbers of the persons contacted. Copies of any
11 correspondence with the tribes shall be attached as exhibits to
12 the petition; and

13 (c) what specific efforts were made to
14 comply with the placement preferences set forth in the federal
15 Indian Child Welfare Act of 1978 or the placement preferences
16 of the appropriate Indian tribes.

17 C. Notice of the filing of the motion, accompanied
18 by a copy of the motion, shall be served by the moving party on
19 all other parties, the foster parent, preadoptive parent or
20 relative providing care for the child with whom the child is
21 residing, foster parents with whom the child has resided for
22 six months within the previous twelve months, the custodian of
23 the child, any person appointed to represent any party and any
24 other person the court orders. Service shall be in accordance
25 with the Children's Court Rules for the service of motions,

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1 except that foster parents and attorneys of record in this
2 proceeding shall be served by certified mail. The notice shall
3 state specifically that the person served shall file a written
4 response to the motion within twenty days if the person intends
5 to contest the termination. In any case involving a child
6 subject to the federal Indian Child Welfare Act of 1978, notice
7 shall also be sent by certified mail to the tribes of the
8 child's parents and upon any "Indian custodian" as that term is
9 defined in 25 U.S.C. Section 1903(6). Further notice shall not
10 be required on a parent who has been provided notice previously
11 pursuant to Section 32A-4-17 NMSA 1978 and who failed to make
12 an appearance.

13 D. When a motion to terminate parental rights is
14 filed, the moving party shall request a hearing on the motion.
15 The hearing date shall be at least thirty days, but no more
16 than sixty days, after service is effected upon the parties
17 entitled to service under this section.

18 E. In any action for the termination of parental
19 rights brought by a party other than the department and
20 involving a child in the legal custody of the department, the
21 department may:

22 (1) litigate a motion for the termination of
23 parental rights that was initially filed by another party; or

24 (2) move that the motion for the termination
25 of parental rights be found premature and denied.

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1 F. When a motion to terminate parental rights is
2 filed, the department shall perform concurrent planning.

3 G. When a child has been in foster care for not
4 less than fifteen of the previous twenty-two months, the
5 department shall file a motion to terminate parental rights,
6 unless:

7 (1) a parent has made substantial progress
8 toward eliminating the problem that caused the child's
9 placement in foster care; it is likely that the child will be
10 able to safely return to the parent's home within three months;
11 and the child's return to the parent's home will be in the
12 child's best interests;

13 (2) the child has a close and positive
14 relationship with a parent and a permanent plan that does not
15 include termination of parental rights will provide the most
16 secure and appropriate placement for the child;

17 (3) the child is fourteen years of age or
18 older, is firmly opposed to termination of parental rights and
19 is likely to disrupt an attempt to place ~~[him]~~ the child with
20 an adoptive family;

21 (4) a parent is terminally ill, but in
22 remission, and does not want ~~[his]~~ parental rights to be
23 terminated; provided that the parent has designated a guardian
24 for ~~[his]~~ the child;

25 (5) the child is not capable of functioning if

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1 placed in a family setting. In such a case, the court shall
2 reevaluate the status of the child every ninety days unless
3 there is a final court determination that the child cannot be
4 placed in a family setting;

5 (6) grounds do not exist for termination of
6 parental rights;

7 (7) the child is an unaccompanied, refugee
8 minor and the situation regarding the child involves
9 international legal issues or compelling foreign policy issues;
10 [~~or~~]

11 (8) adoption is not an appropriate plan for
12 the child; or

13 (9) the parent's incarceration or
14 participation in a court-ordered residential substance abuse
15 treatment program constitutes the primary factor in the child's
16 placement in substitute care and termination of parental rights
17 is not in the child's best interest.

18 H. For purposes of this section, a child shall be
19 considered to have entered foster care on the earlier of:

20 (1) the date of the first judicial finding
21 that the child has been abused or neglected; or

22 (2) the date that is sixty days after the date
23 on which the child was removed from the home.

24 I. The grounds for any attempted termination
25 shall be proved by clear and convincing evidence. In any

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1 proceeding involving a child subject to the federal Indian
2 Child Welfare Act of 1978, the grounds for any attempted
3 termination shall be proved beyond a reasonable doubt and shall
4 meet the requirements set forth in 25 U.S.C. Section 1912(f).

5 J. When the court terminates parental rights, it
6 shall appoint a custodian for the child and fix responsibility
7 for the child's support.

8 K. In any termination proceeding involving a child
9 subject to the federal Indian Child Welfare Act of 1978, the
10 court shall in any termination order make specific findings
11 that the requirements of that act have been met.

12 L. A judgment of the court terminating parental
13 rights divests the parent of all legal rights and privileges
14 and dispenses with both the necessity for the consent to or
15 receipt of notice of any subsequent adoption proceeding
16 concerning the child. A judgment of the court terminating
17 parental rights shall not affect the child's rights of
18 inheritance from and through the child's biological
19 parents.

20 M. When the court denies a motion to terminate
21 parental rights, the court shall issue appropriate orders
22 immediately. The court shall direct the parties to file a
23 stipulated order and interim plan or a request for hearing
24 within thirty days of the date of the hearing denying the
25 termination of parental rights."

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1 Section 48. Section 32A-4-32 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 126, as amended) is amended to read:

3 "32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE.--

4 A. A motion for permanent guardianship may be filed
5 by any party.

6 B. A motion for permanent guardianship shall set
7 forth:

8 (1) the date, place of birth and marital
9 status of the child, if known;

10 (2) the facts and circumstances supporting the
11 grounds for permanent guardianship;

12 (3) the name and address of the prospective
13 guardian and a statement that the person agrees to accept the
14 duties and responsibilities of guardianship;

15 (4) the basis for the court's jurisdiction;

16 (5) the relationship of the child to the
17 petitioner and the prospective guardian; and

18 (6) whether the child is subject to the
19 federal Indian Child Welfare Act of 1978 and, if so:

20 (a) the tribal affiliations of the
21 child's parents;

22 (b) the specific actions taken by the
23 petitioner to notify the parents' tribe and the results of the
24 contacts, including the names, addresses, titles and telephone
25 numbers of the persons contacted. Copies of any correspondence

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1 with the tribes shall be attached as exhibits to the petition;
2 and

3 (c) what specific efforts were made to
4 comply with the placement preferences set forth in the federal
5 Indian Child Welfare Act of 1978 or the placement preferences
6 of the appropriate Indian tribes.

7 C. If the motion is not filed by the prospective
8 guardian, the motion shall be verified by the prospective
9 guardian.

10 D. Notice of the filing of the motion, accompanied
11 by a copy of the motion, shall be served by the moving party on
12 any parent who has not previously been made a party to the
13 proceeding, the parents of the child, foster parents with whom
14 the child is residing, the foster parent, preadoptive parent or
15 relative providing care for the child with whom the child has
16 resided for six months, the child's custodian, the department,
17 any person appointed to represent any party, including the
18 child's guardian ad litem, and any other person the court
19 orders provided with notice. Service shall be in accordance
20 with the Children's Court Rules for the service of motions. In
21 a case involving a child subject to the federal Indian Child
22 Welfare Act of 1978, notice shall also be sent by certified
23 mail to the Indian tribes of the child's parents and to any
24 "Indian custodian" as that term is defined in 25 U.S.C. Section
25 1903(6). Further notice shall not be required to a parent who

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1 has been provided notice previously pursuant to Section
2 32A-4-17 NMSA 1978 and who failed to make an appearance.

3 E. The grounds for permanent guardianship shall be
4 proved by clear and convincing evidence. The grounds for
5 permanent guardianship shall be proved beyond a reasonable
6 doubt and meet the requirements of 25 U.S.C. Section 1912(f) in
7 any proceeding involving a child subject to the federal Indian
8 Child Welfare Act of 1978.

9 F. A judgment of the court vesting permanent
10 guardianship with an individual divests the biological or
11 adoptive parent of legal custody or guardianship of the child,
12 but is not a termination of the parent's rights. A child's
13 inheritance rights from and through the child's biological or
14 adoptive parents are not affected by this proceeding.

15 G. Upon a finding that grounds exist for a
16 permanent guardianship, the court may incorporate into the
17 final order provisions for visitation with the natural parents,
18 siblings or other relatives of the child and any other
19 provision necessary to rehabilitate the child or provide for
20 the child's continuing safety and well-being.

21 H. The court shall retain jurisdiction to enforce
22 its judgment of permanent guardianship.

23 I. Any party may make a motion for revocation of
24 the order granting guardianship when there is a significant
25 change of circumstances, including:

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1 (1) the child's parent is able and willing to
2 properly care for the child; or

3 (2) the child's guardian is unable to properly
4 care for the child.

5 J. The court shall appoint a guardian ad litem for
6 the child in all proceedings for the revocation of permanent
7 guardianship if the child is under the age of fourteen. The
8 court shall appoint an attorney for the child in all
9 proceedings for the revocation of permanent guardianship if the
10 child is fourteen years of age or older at the inception of the
11 proceedings.

12 K. The court may revoke the order granting
13 guardianship when a significant change of circumstances has
14 been proven by clear and convincing evidence and it is in the
15 child's best interests to revoke the order granting
16 guardianship."

17 Section 49. Section 32A-4-33 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 127, as amended) is amended to read:

19 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

20 A. All records or information concerning a party to
21 a neglect or abuse proceeding, including social records,
22 diagnostic evaluations, psychiatric or psychological reports,
23 videotapes, transcripts and audio recordings of a child's
24 statement of abuse or medical reports incident to or obtained
25 as a result of a neglect or abuse proceeding or that were

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1 produced or obtained during an investigation in anticipation of
2 or incident to a neglect or abuse proceeding shall be
3 confidential and closed to the public.

4 B. The records described in Subsection A of this
5 section shall be disclosed only to the parties and:

- 6 (1) court personnel;
- 7 (2) court-appointed special advocates;
- 8 (3) the child's guardian ad litem;
- 9 (4) the attorney representing the child in an
10 abuse or neglect action, a delinquency action or any other
11 action under the Children's Code;
- 12 (5) department personnel;
- 13 (6) any local substitute care review board or
14 any agency contracted to implement local substitute care review
15 boards;
- 16 (7) law enforcement officials, except when use
17 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
- 18 (8) district attorneys, except when use
19 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
- 20 (9) any state government social services
21 agency in any state or when, in the opinion of the department
22 it is in the best interest of the child, a governmental social
23 services agency of another country;
- 24 (10) those persons or entities of an Indian
25 tribe specifically authorized to inspect the records pursuant

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1 to the federal Indian Child Welfare Act of 1978 or any
2 regulations promulgated thereunder;

3 (11) a foster parent, if the records are those
4 of a child currently placed with that foster parent or of a
5 child being considered for placement with that foster parent
6 and the records concern the social, medical, psychological or
7 educational needs of the child;

8 (12) school personnel involved with the child
9 if the records concern the child's social or educational needs;

10 (13) health care or mental health
11 professionals involved in the evaluation or treatment of the
12 child, the child's parents, guardian, custodian or other family
13 members;

14 (14) protection and advocacy representatives
15 pursuant to the federal Developmental Disabilities Assistance
16 and Bill of Rights Act and the federal Protection and Advocacy
17 for Mentally Ill Individuals Amendments Act of 1991;

18 (15) children's safehouse organizations
19 conducting investigatory interviews of children on behalf of a
20 law enforcement agency or the department; and

21 (16) any other person or entity, by order of
22 the court, having a legitimate interest in the case or the work
23 of the court.

24 C. A parent, guardian or legal custodian whose
25 child has been the subject of an investigation of abuse or

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1 neglect where no petition has been filed shall have the right
2 to inspect any medical report, psychological evaluation, law
3 enforcement reports or other investigative or diagnostic
4 evaluation; provided that any identifying information related
5 to the reporting party or any other party providing information
6 shall be deleted. The parent, guardian or legal custodian
7 shall also have the right to the results of the investigation
8 and the right to petition the court for full access to all
9 department records and information except those records and
10 information the department finds would be likely to endanger
11 the life or safety of any person providing information to the
12 department.

13 D. Whoever intentionally and unlawfully releases
14 any information or records closed to the public pursuant to the
15 Abuse and Neglect Act or releases or makes other unlawful use
16 of records in violation of that act is guilty of a petty
17 misdemeanor and shall be sentenced pursuant to the provisions
18 of Section 31-19-1 NMSA 1978.

19 ~~[E. When a child's death is allegedly caused by~~
20 ~~abuse or neglect, the department may release information about~~
21 ~~the case after consultation with and the consent of the~~
22 ~~district attorney.~~

23 F.] E. The department shall promulgate rules for
24 implementing disclosure of records pursuant to this section and
25 in compliance with state and federal law and the Children's

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1 Court Rules."

2 Section 50. A new Section 32A-4-33.1 NMSA 1978 is enacted
3 to read:

4 "32A-4-33.1. [NEW MATERIAL] RECORDS RELEASE WHEN A CHILD
5 DIES.--

6 A. After learning that a child fatality has
7 occurred and that there is reasonable suspicion that the
8 fatality was caused by abuse or neglect, the department shall,
9 upon written request to the secretary of the department,
10 release the following information, if in the department's
11 possession, within five business days:

12 (1) the age and gender of the child;
13 (2) the date of death;
14 (3) whether the child was in foster care or in
15 the home of the child's parent or guardian at the time of
16 death; and

17 (4) whether an investigation is being
18 conducted by the department.

19 B. If an investigation is being conducted by the
20 department, then a request for further information beyond that
21 listed in Subsection A of this section shall be answered with a
22 statement that a report is under investigation.

23 C. Upon completion of a child abuse or neglect
24 investigation into a child's death, if it is determined that
25 abuse or neglect caused the child's death, the following

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1 documents shall be released upon request:

2 (1) a summary of the department's
3 investigation;

4 (2) a law enforcement investigation report, if
5 in the department's possession; and

6 (3) a medical examiner's report, if in the
7 department's possession.

8 D. Prior to releasing any document pursuant to
9 Subsection C of this section, the department shall consult with
10 the district attorney and shall redact:

11 (1) information that would, in the opinion of
12 the district attorney, jeopardize a criminal investigation or
13 proceeding;

14 (2) identifying information related to a
15 reporting party or any other party providing information; and

16 (3) information that is privileged,
17 confidential or not subject to disclosure pursuant to any other
18 state or federal law.

19 E. Once documents pursuant to this section have
20 been released by the department, the department may comment on
21 the case within the scope of the release.

22 F. Information released by the department
23 consistent with the requirements of this section does not
24 require prior notice to any other individual.

25 G. Nothing in this section shall be construed as

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1 requiring the department to obtain documents not in the abuse
2 and neglect case file.

3 H. A person disclosing abuse and neglect case file
4 information as required by this section shall not be subject to
5 suit in civil or criminal proceedings for complying with the
6 requirements of this section."

7 Section 51. Section 32A-5-8 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 135, as amended) is amended to read:

9 "32A-5-8. CONFIDENTIALITY OF RECORDS.--

10 A. Unless the petitioner agrees to be contacted or
11 agrees to the release of the petitioner's identity to the
12 parent and the parent agrees to be contacted or agrees to the
13 release of the parent's identity to the petitioner, the
14 attorneys, the court, the agency and the department shall
15 maintain confidentiality regarding the names of the parties,
16 unless the information is already otherwise known. After the
17 petition is filed and prior to the entry of the decree, the
18 records in adoption proceedings shall be open to inspection
19 only by the attorney for the petitioner, the department or the
20 agency, any attorney appointed as a guardian ad litem or
21 attorney for the adoptee, any attorney retained by the adoptee
22 or other persons upon order of the court for good cause shown.

23 B. All records, whether on file with the court, an
24 agency, the department, an attorney or other provider of
25 professional services in connection with an adoption, are

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1 confidential and may be disclosed only pursuant to the
2 provisions of the Adoption Act. All information and
3 documentation provided for the purpose of full disclosure is
4 confidential. Documentation provided for the purpose of full
5 disclosure shall remain the property of the person making full
6 disclosure when a prospective adoptive parent decides not to
7 accept a placement. Immediately upon refusal of the placement,
8 the prospective adoptive parent shall return all full
9 disclosure documentation to the person providing full
10 disclosure. A prospective adoptive parent shall not disclose
11 any confidential information received during the full
12 disclosure process, except as necessary to make a placement
13 decision or to provide information to a child's guardian ad
14 litem or attorney or the court.

15 C. All hearings in adoption proceedings shall be
16 confidential and shall be held in closed court without
17 admittance of any person other than parties and their counsel.

18 D. A person who intentionally and unlawfully
19 releases any information or records closed to the public
20 pursuant to the Adoption Act or releases or makes other
21 unlawful use of records in violation of that act is guilty of a
22 petty misdemeanor and shall be sentenced pursuant to the
23 provisions of Section 31-19-1 NMSA 1978.

24 E. Prior to the entry of the decree of adoption,
25 the parent consenting to the adoption or relinquishing parental

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1 rights to an agency or the department shall execute an
2 affidavit stating whether the parent will permit contact or the
3 disclosure of the parent's identity to the adoptee or the
4 adoptee's prospective adoptive parents."

5 Section 52. Section 32A-5-16 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 143, as amended) is amended to read:

7 "32A-5-16. TERMINATION PROCEDURES.--

8 A. A proceeding to terminate parental rights may be
9 initiated in connection with or prior to an adoption
10 proceeding. Venue shall be in the court for the county in
11 which the child is physically present or in the county from
12 which the child was placed. The proceeding may be initiated by
13 any of the following:

- 14 (1) the department;
15 (2) an agency; or
16 (3) any other person having a legitimate
17 interest in the matter, including a petitioner for adoption,
18 the child's guardian, the child's guardian ad litem or attorney
19 in another action, a foster parent, a relative of the child or
20 the child.

21 B. A petition for termination of parental rights
22 shall be signed and verified by the petitioner, be filed with
23 the court and set forth:

- 24 (1) the date, place of birth and marital
25 status of the child, if known;

1 (2) the grounds for termination and the facts
2 and circumstances supporting the grounds for termination;

3 (3) the names and addresses of the person,
4 authorized agency or agency officer to whom custody might be
5 transferred;

6 (4) the basis for the court's jurisdiction;

7 (5) that the petition is in contemplation of
8 adoption;

9 (6) the relationship or legitimate interest of
10 the applicant to the child; and

11 (7) whether the child is an Indian child and,
12 if so:

13 (a) the tribal affiliations of the
14 child's parents;

15 (b) the specific actions taken by the
16 moving party to notify the parents' tribe and the results of
17 the contacts, including the names, addresses, titles and
18 telephone numbers of the persons contacted. Copies of any
19 correspondence with the Indian tribe shall be attached as
20 exhibits to the petition; and

21 (c) what specific efforts were made to
22 comply with the placement preferences set forth in the federal
23 Indian Child Welfare Act of 1978 or the placement preferences
24 of the appropriate Indian tribes.

25 C. Notice of the filing of the petition,

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1 accompanied by a copy of the petition, shall be served by the
2 petitioner on the parents of the child, the child's guardian,
3 the legal custodian of the child, the person with whom the
4 child is residing, the individuals with whom the child has
5 resided within the past six months and the department. Service
6 shall be in accordance with the Rules of Civil Procedure for
7 the District Courts for the service of process in a civil
8 action in this state, with the exception that the department
9 may be served by certified mail. The notice shall state
10 specifically that the person served shall file a written
11 response to the petition within twenty days if the person
12 intends to contest the termination. In any case involving an
13 Indian child, notice shall also be served on the child's Indian
14 tribe pursuant to the federal Indian Child Welfare Act of 1978.

15 D. If the identification or whereabouts of a parent
16 is unknown, the petitioner shall file a motion for an order
17 granting service by publication or an order stating that
18 service by publication is not required. A motion for an order
19 granting service by publication shall be supported by the
20 affidavit of the petitioner, the agency or the petitioner's
21 attorney detailing the efforts made to locate the parent. Upon
22 being satisfied that reasonable efforts to locate the parent
23 have been made and that information as to the identity or
24 whereabouts of the parent is still insufficient to effect
25 service in accordance with SCRA, Rule 1-004, the court shall

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1 order service by publication or order that publication is not
2 required because the parent's consent is not required pursuant
3 to the provisions of Section 32A-5-19 NMSA 1978.

4 E. The court shall, upon request, appoint counsel
5 for an indigent parent who is unable to obtain counsel or if,
6 in the court's discretion, appointment of counsel for an
7 indigent parent is required in the interest of justice.
8 Payment for the appointed counsel shall be made by the
9 petitioner pursuant to the rate determined by the supreme court
10 of New Mexico for court-appointed attorneys.

11 F. The court shall appoint a guardian ad litem for
12 the child in all contested proceedings for termination of
13 parental rights. If the child is fourteen years of age or
14 older and in the custody of the department, the child's
15 attorney appointed pursuant to the Abuse and Neglect Act shall
16 represent the child in any proceedings for termination of
17 parental rights under this section.

18 G. Within thirty days after the filing of a
19 petition to terminate parental rights, the petitioner shall
20 request a hearing on the petition. The hearing date shall be
21 at least thirty days after service is effected upon the parent
22 of the child or completion of publication.

23 H. The grounds for any attempted termination shall
24 be proved by clear and convincing evidence. In any proceeding
25 involving an Indian child, the grounds for any attempted

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1 termination shall be proved beyond a reasonable doubt and meet
2 the requirements set forth in the federal Indian Child Welfare
3 Act of 1978.

4 I. If the court terminates parental rights, it
5 shall appoint a custodian for the child. Upon entering an
6 order terminating the parental rights of a parent, the court
7 may commit the child to the custody of the department, the
8 petitioner or an agency willing to accept custody for the
9 purpose of placing the child for adoption. In any termination
10 proceeding involving an Indian child, the court shall, in any
11 termination order, make specific findings that the requirements
12 of the federal Indian Child Welfare Act of 1978 were met.

13 J. A judgment of the court terminating parental
14 rights divests the parent of all legal rights. Termination of
15 parental rights shall not affect the child's right of
16 inheritance through the former parent."

17 Section 53. Section 32A-5-24 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 151, as amended) is amended to read:

19 "32A-5-24. RELINQUISHMENTS TO THE DEPARTMENT.--

20 A. When a parent elects to relinquish parental
21 rights to the department, a petition to accept the
22 relinquishment shall be filed, unless an abuse or neglect
23 proceeding is pending. If an abuse or neglect proceeding is
24 pending, the relinquishment shall be heard in the context of
25 that proceeding.

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1 B. In all hearings regarding relinquishment of
2 parental rights to the department, the child shall be
3 represented by a guardian ad litem. If the child is fourteen
4 years of age or older and in the custody of the department, the
5 child's attorney appointed pursuant to the Abuse and Neglect
6 Act shall represent the child in any proceeding for termination
7 of parental rights under this section.

8 C. If a proposed relinquishment of parental rights
9 is not in contemplation of adoption, the court shall not allow
10 the relinquishment of parental rights unless it finds that good
11 cause exists, that the department has made reasonable efforts
12 to preserve the family and that relinquishment of parental
13 rights is in the child's best interest. Whenever a parent
14 relinquishes [~~his parental~~] the parent's rights pursuant to
15 this subsection, the parent shall remain financially
16 responsible for the child. The court may order the parent to
17 pay the reasonable costs of support and maintenance of the
18 child. The court may use the child support guidelines set
19 forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable
20 payment.

21 D. When a parent relinquishes the parent's rights
22 under this section, the parent shall be notified that no
23 contact will be enforced by the court, regardless of any
24 informal agreement, unless the parties have agreed to an open
25 adoption pursuant to Section 32A-5-35 NMSA 1978. The consent

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1 for relinquishment shall be in writing and shall state that the
2 parties understand that any informal agreement allowing contact
3 will not be enforced by the courts."

4 Section 54. Section 32A-5-33 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 160) is amended to read:

6 "32A-5-33. APPOINTMENT OF GUARDIAN AD LITEM OR ATTORNEY
7 FOR THE ADOPTEE OR OTHER PARTY.--Upon the motion of any party
8 or upon the court's own motion, the court may appoint a
9 guardian ad litem for the adoptee or for any person found to be
10 incompetent or a child who is a party to the proceeding. In
11 any contested proceeding, the court shall appoint a guardian ad
12 litem for the adoptee. The court may appoint the child's
13 attorney appointed pursuant to the Abuse and Neglect Act if the
14 child is fourteen years of age or older and in the custody of
15 the department."

16 Section 55. Section 32A-5-35 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 162, as amended) is amended to read:

18 "32A-5-35. OPEN ADOPTIONS.--

19 A. The parents of the adoptee and the petitioner
20 may agree to contact between the parents and the petitioner or
21 contact between the adoptee and one or more of the parents or
22 contact between the adoptee and relatives of the parents. An
23 agreement shall, absent a finding to the contrary, be presumed
24 to be in the best interests of the child and shall be included
25 in the decree of adoption. The agreement may also include

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1 contact between siblings and the adoptee based on a finding
2 that it is in the best interests of the adoptee and the
3 adoptee's siblings and a determination that the siblings'
4 parent, guardian or custodian has consented to the agreement.

5 The contact may include exchange of identifying or
6 nonidentifying information or visitation between the parents or
7 the parents' relatives or the adoptee's siblings and the
8 petitioner or visitation between the parents or the parents'
9 relatives or the adoptee's siblings and the adoptee. An
10 agreement entered into pursuant to this section shall be
11 considered an open adoption.

12 B. The court may appoint a guardian ad litem for
13 the adoptee. The court shall adopt a presumption in favor of
14 appointing a guardian ad litem for the adoptee when visitation
15 between the biological family and the adoptee is included in an
16 agreement; however, this requirement may be waived by the court
17 for good cause shown. When an adoptive placement is made
18 voluntarily through an agency or pursuant to Section 32A-5-13
19 NMSA 1978, the court may, in its discretion, appoint a guardian
20 ad litem. If the child is fourteen years of age or older, the
21 court may appoint an attorney for the child. In all adoptions
22 other than those in which the child is placed by the
23 department, the court may assess the parties for the cost of
24 services rendered by the guardian ad litem or the child's
25 attorney. The duties of the guardian ad litem or child's

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1 attorney end upon the filing of the decree, unless otherwise
2 ordered by the court.

3 C. In determining whether the agreement is in the
4 adoptee's best interests, the court shall consider the
5 adoptee's wishes, but the wishes of the adoptee shall not
6 control the court's findings as to the best interests of the
7 adoptee.

8 D. Every agreement entered into pursuant to
9 provisions of this section shall contain a clause stating that
10 the parties agree to the continuing jurisdiction of the court
11 and to the agreement and understand and intend that any
12 disagreement or litigation regarding the terms of the agreement
13 shall not affect the validity of the relinquishment of parental
14 rights, the adoption or the custody of the adoptee.

15 E. The court shall retain jurisdiction after the
16 decree of adoption is entered, if the decree contains an
17 agreement for contact, for the purpose of hearing motions
18 brought to enforce or modify an agreement entered into pursuant
19 to the provisions of this section. The court shall not grant a
20 request to modify the agreement unless the moving party
21 establishes that there has been a change of circumstances and
22 the agreement is no longer in the adoptee's best interests."

23 Section 56. A new Section 32A-7A-1 NMSA 1978 is enacted
24 to read:

25 "32A-7A-1. [NEW MATERIAL] SHORT TITLE.--Chapter 32A,
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1 Article 7A NMSA 1978 may be cited as the "Juvenile Public
2 Safety Advisory Board Act".

3 Section 57. A new Section 32A-7A-2 NMSA 1978 is enacted
4 to read:

5 "32A-7A-2. [NEW MATERIAL] JUVENILE PUBLIC SAFETY ADVISORY
6 BOARD--TERMS--DIRECTOR.--

7 A. The "juvenile public safety advisory board" is
8 created, consisting of seven members appointed by the governor.
9 The board is administratively attached to the department. The
10 terms of members of the board shall be six years.

11 B. A director shall be appointed by the governor as
12 the administrative officer of the juvenile public safety
13 advisory board. The director shall employ other staff as
14 necessary to carry out the duties of the board. Employees
15 shall be employed in classified positions and shall be subject
16 to the provisions of the Personnel Act."

17 Section 58. A new Section 32A-7A-3 NMSA 1978 is enacted
18 to read:

19 "32A-7A-3. [NEW MATERIAL] BOARD--REMOVAL--VACANCIES.--A
20 member of the juvenile public safety advisory board may be
21 removed by the governor as provided in Article 5, Section 5 of
22 the constitution of New Mexico. Vacancies shall be filled by
23 the governor for the remainder of the unexpired term."

24 Section 59. A new Section 32A-7A-4 NMSA 1978 is enacted
25 to read:

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1 "32A-7A-4. [NEW MATERIAL] BOARD--QUALIFICATIONS.--Members
2 of the juvenile public safety advisory board shall be persons
3 qualified by education or professional training in such fields
4 as criminology, education, health, psychology, psychiatry, law,
5 social work or sociology for children and youth. The
6 membership shall be reasonably representative of the various
7 geographic regions of the state, and no two members of the
8 board may reside in the same county."

9 Section 60. A new Section 32A-7A-5 NMSA 1978 is enacted
10 to read:

11 "32A-7A-5. [NEW MATERIAL] BOARD--CHAIR.--

12 A. The governor shall designate one member of the
13 juvenile public safety advisory board to serve as chair.

14 B. The chair may designate two members of the board
15 to serve as regional vice chairs."

16 Section 61. A new Section 32A-7A-6 NMSA 1978 is enacted
17 to read:

18 "32A-7A-6. [NEW MATERIAL] BOARD--POWERS AND DUTIES.--

19 A. The juvenile public safety advisory board shall:

20 (1) advise the department on release
21 decisions, including the criteria to be used to grant release
22 and participation in decisions to grant or deny release;

23 (2) meet with the secretary of children, youth
24 and families or the secretary's designee a minimum of twice
25 each year for the purpose of reviewing the activities of the

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1 department;

2 (3) visit each facility for adjudicated
3 delinquent children operated by the department at least once
4 each year and on or before June 30 of each year, submit a
5 written report to the governor and the secretary regarding
6 conditions relating to the care and treatment of youth assigned
7 to the facilities and any other matters pertinent in the
8 judgment of the board; and

9 (4) make recommendations to the secretary of
10 children, youth and families and the director of the juvenile
11 justice division of the department concerning programs and
12 facilities for adjudicated delinquent children.

13 B. Within forty days of a juvenile's arrival at a
14 facility, the juvenile public safety advisory board shall
15 conduct an initial assessment of the juvenile. At regularly
16 scheduled intervals thereafter, the board shall conduct
17 administrative reviews to assess the juvenile's progress or
18 lack thereof. After each administrative review, the board
19 shall prepare a report of the juvenile offender's progress with
20 recommendations as to readiness for release or appropriateness
21 of programming."

22 Section 62. A new Section 32A-7A-7 NMSA 1978 is enacted
23 to read:

24 "32A-7A-7. [NEW MATERIAL] BOARD--COMPENSATION.--The
25 members of the juvenile public safety advisory board shall

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1 receive per diem and mileage as provided for nonsalaried public
2 officers in the Per Diem and Mileage Act and shall receive no
3 other compensation, perquisite or allowance."

4 Section 63. A new Section 32A-7A-8 NMSA 1978 is enacted
5 to read:

6 "32A-7A-8. [NEW MATERIAL] ACCESS.--The juvenile public
7 safety advisory board shall have access at reasonable times to
8 any adjudicated delinquent child and any records pertaining to
9 the child for whom the department is considering release or who
10 has requested release pursuant to procedures established by the
11 department. The agency or facility to which legal custody was
12 transferred shall also provide the board with facilities for
13 communicating with and interviewing children."

14 Section 64. Section 32A-18-1 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 224, as amended) is amended to read:

16 "32A-18-1. CULTURAL RECOGNITION.--

17 A. A person who serves as a judge, prosecutor,
18 child's attorney, guardian ad litem, treatment guardian, court
19 appointed attorney, court appointed special advocate, foster
20 parent, mental health commissioner or mental health treatment
21 service provider for a child subject to an abuse or neglect
22 petition, a family in need of services petition or a mental
23 health placement shall receive periodic training, to the extent
24 of available resources, to develop his knowledge about
25 children, the physical and psychological formation of children

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1 and the impact of ethnicity on a child's needs. Institutions
2 that serve children and their families shall, considering
3 available resources, provide similar training to institutional
4 staff.

5 B. The training shall include study of:

- 6 (1) cross-cultural dynamics and sensitivity;
- 7 (2) child development;
- 8 (3) family composition and dynamics;
- 9 (4) parenting skills and practices;
- 10 (5) culturally appropriate treatment plans;

11 and

- 12 (6) alternative health practices."

13 Section 65. A new Section 32A-21-4.1 NMSA 1978 is enacted
14 to read:

15 "32A-21-4.1. [NEW MATERIAL] EMANCIPATION FOR MEDICAL
16 DECISION-MAKING.--

17 A. Except as otherwise provided by law, a parent or
18 legal custodian of an unemancipated minor may make that minor's
19 health care decisions.

20 B. An unemancipated minor who is fourteen years of
21 age or older and who has capacity to consent may give consent
22 for medically necessary health care services provided that the
23 minor is:

- 24 (1) living apart from the minor's parents or
25 legal custodian, with or without the consent of the parent or

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1 legal custodian;

2 (2) pregnant;

3 (3) the parent of a child; or

4 (4) in a physician's judgment, in danger of
5 suffering serious health consequences if health care services
6 are not provided or is in need of medically necessary
7 examination or treatment.

8 C. For purposes of this section, "medically
9 necessary services" means clinical and rehabilitative,
10 physical, mental or behavioral health services that are:

11 (1) essential to prevent, diagnose or treat
12 medical conditions or are essential to enable the child to
13 attain, maintain or regain functional capacity;

14 (2) delivered in the amount, duration, scope
15 and setting that is clinically appropriate to the specific
16 physical, mental and behavioral health care needs of the child;

17 (3) provided within professionally accepted
18 standards of practice and national guidelines; and

19 (4) required to meet the physical, mental and
20 behavioral health needs of the child and are not primarily for
21 the convenience of the child, provider or payer.

22 D. The consent of the minor to examination or
23 treatment pursuant to this subsection is not subject to
24 disaffirmance because of minority.

25 E. A person who treats a minor pursuant to

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1 Paragraph (4) of Subsection B of this section shall before
2 initiating treatment make prudent and reasonable efforts to
3 determine if the uninformed parent or guardian has maintained
4 substantial and continuous contact with the unemancipated minor
5 and, if so, communicate with the minor's parent or legal
6 custodian and shall document such efforts in the minor's
7 medical record. If the person believes such efforts would
8 jeopardize treatment necessary to the minor's life or are
9 necessary to avoid serious threat to the minor's health, the
10 person may omit such efforts and note the reasons for the
11 omission in the minor's medical record. The parent or legal
12 guardian of a minor who receives services pursuant to
13 Subsection B of this section is not liable for payment for
14 those services unless the parent or legal custodian has
15 consented to such health care services. The provisions of this
16 subsection do not relieve a parent or legal custodian from
17 liability for payment for emergency services provided to a
18 minor.

19 F. Nothing in this section shall limit a minor's
20 rights under the Children's Mental Health and Developmental
21 Disabilities Act or other state law that grants minors specific
22 consent rights to medical or mental health treatment."

23 Section 66. Section 33-9A-4 NMSA 1978 (being Laws 1988,
24 Chapter 101, Section 42, as amended) is amended to read:

25 "33-9A-4. APPLICATIONS--CRITERIA.--

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1 A. Counties, municipalities or private
2 organizations, individually or jointly, may apply for grants
3 from the fund, including grants for counties or municipalities
4 to purchase contractual services from private organizations;
5 provided that:

6 (1) the application is for funding a program
7 with priority use being for delinquents selected pursuant to
8 the provisions of Section 33-9A-5 NMSA 1978;

9 (2) the applicant certifies that it is willing
10 and able to operate the program according to standards provided
11 by the department, which may include the negotiation of a
12 contract between the delinquent and program staff with
13 provisions such as deductions from employment income for
14 applicable victim restitution, family support, room and board,
15 savings and weekly allowance. In addition to monetary
16 restitution, to the extent practical, or if monetary
17 restitution is not applicable, the contract may include
18 provision for community service restitution for a specific
19 number of hours;

20 (3) the applicant demonstrates the support of
21 key components of the criminal justice system;

22 (4) the applicant, if a private organization,
23 demonstrates the support of the county and municipality where
24 the program will provide services;

25 (5) the applicant certifies that it will

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1 utilize volunteer services as an integral portion of the
2 program to the maximum extent feasible; and

3 (6) no class A county alone or in conjunction
4 with any municipality within a class A county shall receive
5 more than forty-nine percent of any money appropriated to the
6 fund.

7 B. Notwithstanding the provisions of Subsection A
8 of this section, the department may utilize the fund to place
9 individuals eligible, or within twelve months of eligibility,
10 for parole in community-based settings. The [~~juvenile parole~~
11 ~~board~~] department may, in its discretion, require participation
12 by a delinquent in a program as a condition of [~~parole pursuant~~
13 ~~to the provisions of Section 32A-7-6 NMSA 1978~~] supervised
14 release.

15 C. The department may utilize not more than twenty-
16 five percent of the fund to contract directly for community
17 corrections programs or to establish programs operated by the
18 department; provided, however, that the department may utilize
19 up to an additional ten percent of the fund to operate juvenile
20 community corrections programs if, after a reasonable effort to
21 solicit proposals, there are no satisfactory proposals from a
22 community where it is determined that a program is necessary or
23 if it becomes necessary to cancel a program as provided in the
24 contract.

25 D. The department shall establish additional

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1 guidelines for allocation of funds under the Juvenile Community
2 Corrections Act. An applicant shall retain the authority to
3 accept or reject the placement of any delinquent in a program."

4 Section 67. Section 33-9A-5 NMSA 1978 (being Laws 1988,
5 Chapter 101, Section 43, as amended) is amended to read:

6 "33-9A-5. SELECTION PANELS.--

7 A. The department shall establish a state panel
8 whose duties shall be to immediately screen and identify
9 delinquents sentenced to a juvenile correctional facility of
10 the department and transferred to the legal custody of the
11 department, except individuals who are sentenced or transferred
12 from a judicial district that has established a local panel to
13 exercise these duties pursuant to the provisions of this
14 section and who meet the following criteria:

15 (1) the offense involved is one for which
16 community service or reasonable restitution may be made using a
17 payment schedule compatible with the total amount of
18 restitution to be paid and the time the offender is to
19 participate in a program; and

20 (2) the child is willing to enter into a
21 contract that establishes objectives that shall be achieved
22 before release from the program.

23 B. The department may establish criteria in
24 addition to those established in Subsection A of this section
25 for the screening of delinquents who would benefit from

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1 participation in a program and who would not pose a threat to
2 the community.

3 C. If the state panel determines that a child is
4 suitable for placement in a program, a recommendation to that
5 effect and for modification of disposition shall be presented
6 as soon as possible to the sentencing judge or the [~~juvenile~~
7 ~~parole board~~] department, which may, notwithstanding any
8 provision of law, accept, modify or reject the recommendation.
9 The determination shall be presented to the county,
10 municipality or private nonprofit organization, as applicable,
11 for approval or rejection.

12 D. A county, municipality or private nonprofit
13 organization, individually or jointly, may establish a local
14 panel to exercise the duties and responsibilities of the state
15 panel pursuant to the provisions of Subsection A of this
16 section and, using the same criteria as the state panel, the
17 local panel may screen and identify delinquents. The
18 composition of a local panel shall include, to the maximum
19 extent possible, representatives of the judiciary, the
20 administrative office of the district [~~attorney~~] attorneys, the
21 [~~office of the~~] public defender department, the children, youth
22 and families department, the county sheriff or the municipal
23 police department, individuals representing local programs and
24 private citizens."

25 Section 68. Section 66-5-11 NMSA 1978 (being Laws 1978,
.175312.3SA

underscored material = new
[bracketed material] = delete

1 Chapter 35, Section 233, as amended) is amended to read:

2 "66-5-11. APPLICATION OF MINORS.--

3 A. The application of any person under the age of
4 eighteen years for an instruction permit, provisional license
5 or driver's license shall be signed and verified by the father,
6 mother or guardian or, in the event there is no parent or
7 guardian, by another responsible adult who is willing to assume
8 the obligation imposed under this article upon a person signing
9 the application of a minor.

10 B. The application of a minor who is in the custody
11 of the state may be signed and verified by a grandparent; a
12 sibling over the age of eighteen years; an aunt; an uncle; a
13 foster parent with whom the minor resides; or as authorized by
14 the secretary of children, youth and families, a child
15 protective services worker or juvenile probation officer;
16 provided that the child protective services worker or juvenile
17 probation officer first notifies a foster parent or other
18 responsible party of the intent to sign.

19 [~~B.~~] C. Any negligence or willful misconduct of a
20 minor under the age of eighteen years when driving a motor
21 vehicle upon a highway shall be imputed to the person who has
22 signed the application of the minor for a permit or license,
23 which person shall be jointly and severally liable with the
24 minor for [~~any~~] damages caused by the negligence or willful
25 misconduct except as otherwise provided in Subsection [~~G~~] D of

.175312.3SA

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1 this section.

2 ~~[G-]~~ D. In the event a minor deposits or there is
3 deposited upon ~~[his]~~ the minor's behalf proof of financial
4 responsibility in respect to the operation of a motor vehicle
5 owned by ~~[him]~~ the minor or, if not the owner of a motor
6 vehicle, with respect to the operation of any motor vehicle, in
7 form and in amounts as required under the motor vehicle
8 financial responsibility laws of this state, the division may
9 accept the application of the minor when signed by one parent
10 or the guardian of the minor, and, while such proof is
11 maintained, the parent or guardian is not subject to the
12 liability imposed under Subsection ~~[B]~~ C of this section.

13 Liability shall not be imposed under this section or under the
14 Mandatory Financial Responsibility Act on the state or the
15 secretary of children, youth and families or on a juvenile
16 probation officer or child protective services worker for
17 damages caused by the negligence or willful misconduct of a
18 minor driver whose application for an instruction permit,
19 provisional license or driver's license was signed by the child
20 protective services worker or juvenile probation officer with
21 the authorization of the children, youth and families
22 department while the minor was in the custody of the state."

23 Section 69. REPEAL.--Sections 9-2A-5 and 32A-7-1 through
24 32A-7-9 NMSA 1978 (being Laws 1992, Chapter 57, Section 5 and
25 Laws 1993, Chapter 77, Sections 194 through 202, as amended)

.175312.3SA

underscored material = new
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1 are repealed.

2 Section 70. APPLICABILITY.--The provisions of this act
3 apply to all children who, on July 1, 2009, are on release or
4 are otherwise eligible to be placed on release as if the
5 Juvenile Public Safety Advisory Board Act had been in effect at
6 the time they were placed on release or became eligible to be
7 released.

8 Section 71. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2009.